DÆDALUS

JOURNAL OF THE AMERICAN ACADEMY OF ARTS AND SCIENCES

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Human Rights

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FALL 1983

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Human Rights

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Preface to the Issue: "Human Rights"

Is the term "human rights" simply a late twentieth century equivalent for the eighteenth century concept of the "rights of man"? If so, why was the earlier formulation ever abandoned? Is it that the new concept embraces a greater complement of individual and collective "entitlements," rights that did not figure at all prominently in the Enlightenment? Are we to believe that we are simply bringing an old concept up-to-date? Does this suggest, then, that an earlier, predominantly European-American set of values needs to be amended, added to, made to express and incorporate principles that will reflect a more universal consensus? These are not rhetorical questions; they are relevant to any consideration of why the vocabulary of rights has changed so dramatically in this century, why the term human rights has entered our political language, superficially communicating an incendiary message, but actually saying most things *sotto voce*.

While this issue of *Daedalus* opens with an essay that implies that human rights are essentially the rights of man in twentieth century dress, the concluding essay asks whether the "rights of man" can possibly recapture in our time "the resonance and fullness of meaning" it once had. Why, it may be asked, should the language of rights have lost something of its earlier resonance? Has it indeed done so, and why should this matter? Is it a fact, for example, that even so-called liberal societies are not nearly as agitated by human rights issues as their predecessors were, by questions that touched on the rights of the individual? An even more basic question would be why the term human rights, if it is so systematically ignored, has become so freighted with controversial overtones, why indeed it speaks of ideological and political conflict.

As is obvious from the essays that appear in this volume, there is less agreement in the world today about the meaning of human rights than there was in eighteenth century Europe about the mean-

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ing of the rights of man. When Tom Paine wrote his celebrated tract on that subject, he roused a furious opposition who understood precisely what he was saying and had no intention of permitting his views to go unchallenged. Many felt it absolutely necessary to respond to what they conceived to be a wicked and ill-conceived pronouncement. Why, then, should the rights of man have generated such controversy in Europe? Why, by contrast, do human rights simply evoke a mild tolerance, often a sidestepping of the issue, an unwillingness to confront its implications?

While there is a certain hazard in pressing too far the comparison between eighteenth century and twentieth century situations—the rights of man, after all, divided Europe while human rights, in theory at least, is thought to be a concept embraced by all mankind, or at least by all right-thinking men—this is only the beginning of our contemporary fiction-making capabilities. For, as the pages that follow will make abundantly clear, we live at a time when the embrace of the human rights principle is fairly general, when all claim to be faithful to it; only one's adversaries are thought to be hostile. Just as the world today seems to share a common interest in defining its institutions as democratic—no political term is used more commonly or more loosely—so there appears to be an almost universal desire to accept and exalt the concept of human rights. This ambition ought not to be dismissed too lightly; it is something more than the honor that vice habitually pays to virtue in giving lip service to its ideals.

Today, for reasons that merit attention, fictions are generated to suggest that human rights exist in at least two dimensions, the political and the social. To hear some argue the point, one part of the world, bearing the vestigial or real remains of its bourgeois past, still pays particular heed to political rights—free speech, free press, free elections, and the like—while the other part, nascently or fully socialist, has a quite other agenda, based on quite other necessities, being overwhelmingly concerned with the social welfare and well-being of its citizens. The only difficulty with this neat division of the universe is that it neither describes the world as it exists nor states accurately what in fact happened historically either in the late nineteenth century or the early twentieth century. That part of the world—a relatively small part, it must be said—that appears to be most obviously committed to the "political rights" insisted upon by so many of the revolutionaries of the eighteenth century can also lay claim to being the

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most diligent and the most effective in guaranteeing the so-called social rights of its citizens. This may simply reflect the fact that this part of the world has the resources to pursue an active social policy, and the political interest to do so. In any case, the idea of a neat division of the world, between those states that care only for political freedom and others concerned overwhelmingly with social improvement, is sheer fantasy. It may profit some to believe this, to represent the universe as one great human congregation, divided into two rival communions, one capitalist, the other socialist, but both committed to human rights, with each defining human rights differently. There is ideological and even political gain to be made from such mythmaking, but it carries few other obvious benefits, none calculated to increase our understanding either of politics or ideology in the contemporary world.

The irony of our situation is that we live at a time when human rights are indeed much praised, but very little studied, a time when there is a massive disinclination to look too closely at the conditions that obtain in most countries. That the new states of the world, seeking for certain kinds of autonomy, have been particularly active in insisting on what they perceive to be human rights, that the nightmare experience of Nazi rule for half a decade over most of occupied Europe created a new sensitivity to the human predicament in an age of institutionalized cruelty, and that great power rivalry in the thermonuclear age, creating unparalleled hazards to the survival of the race itself, have all contributed to making human rights a subject of universal concern, is so obvious as scarcely to require elaborate proof. Still, the subject invites evasion. The vulnerability of the individual, required to live in states commanding unprecedented resources for social control, makes many of the earlier demands for individual rights seem positively naive and old-fashioned. It is difficult to know what to do or how to formulate one's demands. One is required to ask what warranties of good behavior can be demanded of the state in a time like the present, and how international pressure can be brought to bear even on those which are most obviously recalcitrant. As for internal restraints on state power, imposed by a population trained to political impotence and restrained by police and military authority, the difficulties of "protest" in these circumstances boggle the imagination. In this situation, where even the acknowledgment of "rights" against the state is thought treasonable, the notion

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of "group rights" is quite inconceivable. In more politically free societies, the idea may gain currency, but few have any experience with formulating rights, defining their limits, or creating justifications for them. It becomes exceedingly difficult to know what protections need to be given, how they can be legitimated, why they ought to be denominated as human rights. It is easy to suggest that the political vocabulary needs to be extended. The questions remain: In what direction; to serve what ends; at what cost?

If, as suggested in this volume, the idea of human rights is "dangerously subversive," what kinds of states will suffer such rights to be proclaimed, let alone enforced? In a world of many states—a good number of which must be seen to be authoritarian by almost any definition—what possibilities exist for advancing the cause of human rights? Is it enough to maintain human rights as an ideal? Does it make sense to pretend that conditions may not be ripe now for the realization of certain goals, but that the mere assertion of their necessity contributes to their possible implementation at a later time? What priority ought liberal-democratic states give to their propagandizing for human rights? What other things must they be prepared to do, and at what risk to themselves? Can one anticipate an improved international order if certain rights are not insisted on, even as these rights are systematically violated, ignored, and denied in many places?

These questions admit of no easy answers. Nor, for that matter, do others that involve the necessary connections between so-called political rights and those generally termed social. How much is the dignity of the individual reduced—indeed denied—by a systematic ignoring of either? How much has this cruel century—for all its pretensions to being solicitous for the well-being of ordinary men and women—shown a disregard, both callous and calculated, for qualities that enlightened men in the eighteenth century thought to inhere in all men, qualities that were thought to express their humanity? Can anything be done to change this? Do wholly new balances need to be struck, so that security and equality do not appear to be the only virtues, so that liberty and privacy are again respected, so that "self-determination" becomes something other than an empty phrase, redolent of an earlier time, and reminiscent almost of a lost innocence?

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Given the specific character of modern states, considering how different are their values and objectives, does the advocacy of human rights necessarily become a utopian enterprise? Or, is it one of the more realistic efforts of our day, to which insufficient thought has been given? Assuming that more thought is given the subject, that both its domestic and international dimensions are taken into account, will such reflection, and the actions that will presumably follow from it, diminish or exacerbate friction in the world? There is good reason to believe that it may serve to create new tensions. Is this a risk worth taking?

At a time when many believe that there are no more pressing questions than those that touch on defense and armaments, when debate on deterrents, nuclear freeze, and missile deployment seems to consume the West, it may be appropriate to ask whether another debate does not merit equal time. Human rights may be the single most important neglected subject of both our national and international political agendas. A society seriously concerned with the dignity of the individual will find itself asking questions that touch not only on traditional political rights—unknown in great parts of the world—but also on other rights that need to be perceived, articulated, justified, and debated. Those societies that are prepared to entertain the hazards of new discussion of human rights will quickly understand why the dichotomy between political and social rights is a false one, why it takes too little account either of present needs or of future possibilities. The rights rhetoric of our time is in urgent need of repair, not only because its revision might serve to inspire a confidence that is so conspicuously lacking at the present time, but because it might even suggest institutional changes that we are generally disinclined to contemplate. Human rights may indeed be a weapon, an arm whose political and social potential we have not even begun to consider. This may explain why so many would just as soon have us do nothing, satisfying ourselves with all our conventional verbal pieties.

Daedalus is much beholden to Emory University for making this study possible. At a time when foundations are not greatly preoccupied with the issue of human rights, preferring to direct their attention elsewhere, Emory University pressed forward, using its own funds to contribute to this inquiry. Its effort needs to be seen as a pilot study, helping to outline the boundaries of a terrain that de-

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serves to be more systematically explored. A special note of thanks is due to Ellen Mickiewicz, David Pacini, Martha Abbott, Thomas Bertrand, David Blumenthal, Robert DeHaan, Jacob Goldstein, Ivor Leclerc, Russell Major, Linda Matthews, Robert Paul, and Steven Tipton, all of Emory University. A university committee, chaired by Professors Mickiewicz and Pacini, helped outline the main thrusts of our inquiry, and contributed to making all the authors welcome at the symposium convened to discuss early drafts of these essays. It is a testimonial to Emory University that it made "Rethinking Human Rights" the subject of a year-long "celebration," that it chose to view the subject in so wide and imaginative a perspective.

S.R.G.

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Maurice Cranston

Are There Any Human Rights?

"HUMAN RIGHTS" IS A FAIRLY NEW NAME for what were formerly called "the rights of man." It was Eleanor Roosevelt in the 1940s who promoted the use of the expression human rights when she discovered, through her work in the United Nations, that the rights of men were not understood in some parts of the world to include the rights of women.[1] The rights of man at an earlier date had itself replaced the original term "natural rights," in part, perhaps, because the concept of natural law, with which the concept of natural rights was logically connected, had become a subject of controversy.

Much was heard about natural rights in the Age of Reason, if only because that was also an age of revolutions. John Locke, in writings associated with the English Revolution of 1688, has some claim to be considered the most important theorist of natural rights in the modern world. He argued in detail that men have a natural right to life, liberty, and property. The Bill of Rights enacted by the English Parliament in 1689 was designed to translate those natural rights into positive rights; it added to them the right, of any person charged with a criminal offense, to a fair and public trial by jury, and outlawed excessive fines and cruel and unusual punishments.

Locke's theories and the example of the English Bill of Rights had a great influence throughout the Western world. In Virginia, in June 1776, a bill of rights was adopted by a representative convention, and its first article proclaimed that

> all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter a state of society they cannot by any

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compact deprive or divest their posterity: namely, the enjoyment of life and liberty, with the means of acquiring and possessing property and pursuing and obtaining happiness.

Take note that here happiness has been added to Locke's three rights, for the world had moved away from the Calvinist austerity of the seventeenth century into the more cheerful hedonism of the eighteenth. The same word recurs in the Declaration of Independence proclaimed by the thirteen American states in July 1776: "We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness"—the eloquence of Jefferson lending wings to the plain thoughts of Locke.

The French Revolution, inspired in so many ways by the English and American revolutions, but soon to develop into something very different from both, immediately adopted the language of rights. Lafayette, remembering it all from his service with the American forces in the War of Independence, transmitted almost word for word those Anglo-Saxon proclamations into the *Déclaration des droits de l'homme et du citoyen*, which marked one of the nobler moments of the year 1789 in Paris. The *Déclaration* asserts that "men are born and remain free and equal in rights"; indeed, that "the purpose of all political associations is the conservation of the natural and inalienable rights of man: these rights are liberty, property, security and resistance to oppression." Liberty is defined as "being unrestrained in doing anything that does not interfere with another's rights," and is held to include the right to free speech, a free press, religious freedom, and freedom from arbitrary arrest.

Thus the idea of human rights (as we now call them) played a central part in the struggles of the seventeenth and eighteenth centuries against absolutism. Absolutism prompted man to claim those rights precisely because it denied them.

In the Middle Ages before the rise of absolutism, different men and different estates in society had different sets of positive rights, and there was less talk about fundamental or universal rights at that time, because people seem to have been reasonably satisfied with the particular rights they had.[2] There was nevertheless in the philosophy of the Middle Ages, and especially in that of St. Thomas Aquinas, a

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distinct and clear articulation of a concept of natural law binding on all men, and of natural rights belonging to all men.

But we must go back even farther in time to trace the origin of the idea of human rights. Citizens of certain Greek city-states enjoyed such rights as *isogoria,* or equal freedom of speech, and *isonomia,* or equality before the law. In the Hellenistic period, which followed the destruction of the city-states, people could no longer think of these as *civil* rights, because there was no civil society in which to realize them; and so the Stoic philosophers reformulated them as universal rights, something which men under all forms of government and all times were entitled to enjoy. They saw these rights not as rooted in civil law, but in a higher law, which reason and nature combined to reveal to men; it was not altogether unlike that law of the Gods that some religious thinkers had always said existed above and beyond the law of princes and magistrates. But the Hellenistic Stoics saw no need to invoke the deities. For them, the law that was higher than any positive law was natural law. Natural law embodied those elementary principles of justice that any rational mind could discern, without any kind of divine revelation. The Stoics of Rome, jurists rather than philosophers, upheld the same idea. Cicero said: "There is a true law, right reason, in accordance with nature; it is unalterable and eternal."

Natural right is thus an idea with a vigorous past: very alive in the ancient world, in medieval Christendom, and in the early modern Age of Reason.[3] It might nevertheless be a fallacious one. And indeed, both natural law and natural rights were distinctly unfashionable in the years between the restoration of the old order in Europe in 1815 and the rise of totalitarian regimes in the 1930s. The rights of men were considered, in all the best philosophical and legal circles, to have been thoroughly discredited. They were not even worth thinking about. It is said that when that remarkable jurist Wesley Newcomb Hohfield directed his students at Yale Law School to turn their minds to an analysis of the word "right," he earned himself considerable unpopularity; his pupils even mounted a petition to have him removed from his Chair.[4]

No one spoke more bitterly against natural rights than Jeremy Bentham, whose "auto-ikon"—built around his skeleton and dressed in his clothes and housed with his mummified head in a little cabin in University College, London—bears stubborn, if not living, witness to

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the imperishability of nineteenth century utilitarianism. "Rights," Bentham wrote, "is the child of law; from real law come real rights; but from imaginary laws, from 'law of nature,' come imaginary rights. . . . Natural rights is simple nonsense; natural and imprescriptible rights (an American phrase), rhetorical nonsense, nonsense upon stilts."[5]

Bentham was not the only political philosopher of his time to speak in such terms of natural rights. David Hume agreed that natural rights and natural law were unreal metaphysical entities; and even Edmund Burke, who believed in natural law, denied that what were called the rights of man could be derived from it. All three theorists also maintained—and this is perhaps what made their criticisms of natural rights so impassioned—that proclaiming natural rights was a mischievous as well as a mistaken activity. Their agreement on the subject may seem surprising, since Bentham's political opinions were entirely opposed to those of Hume and Burke; he was a radical and they were conservatives. The fact is that they each apprehended different sorts of mischief. Bentham objected to proclamations of natural rights because he thought they took the place of actual and effective legislation: governments that published "Declarations" were simply making grand rhetorical statements that cost them nothing, instead of applying themselves to the arduous work of reform. Hume and Burke, on the other hand, objected to public assertions of the rights of man, because such utterances inflamed people to take revolutionary action and led men to think they could have things that they could not.

In his *Reflections on the Revolution in France,* Burke criticizes the authors of the *Déclaration des droits de l'homme* for proclaiming what he calls the "monstrous fiction" of human equality. Talk of this kind, he argues, serves only to inspire "false ideas and vain expectations in men destined to travel in the obscure walk of laborious life," and "to aggravate and embitter that real inequality which it can never remove."[6]

It is hardly surprising that the concept of natural rights, thus attacked on both philosophical and political grounds, and from Left and Right alike, should have fallen from favor. And perhaps most of the destruction was done by those who claimed to believe in natural right. The liberals of nineteenth century Germany, for example, proclaimed their adherence both to natural law and natural rights, but

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went on to say that the rights belonged not to individual persons but to communities or nations. The Declaration of Rights issued by the German liberals in 1848 no longer spoke of *l'homme* or *le citoyen*, but affirmed instead "the rights of the German people." In Victorian England, where the influence of German idealism was strong, the same sort of thing came to be said. F.H. Bradley, for example, wrote in 1894: "The rights of the individual are today not worth serious consideration. . . . The welfare of the community is the end, and is the ultimate standard."[7]

Nineteenth century champions of the doctrine of the rights of the nation, with their scorn for the rights of the individual, were in effect in accord with the theorists of rival camps—positivist, empiricist, utilitarian—who regarded natural law and natural rights as nonsense. And since fashion in philosophy is a very important factor, it is no wonder that by the early twentieth century, there were scarcely any serious theorists left either willing or able to put up a defense of the rights of man. And indeed, after 1918 the critics of the theory of rights became even more extreme in their attacks, the legal positivists going so far as to say that what the courts upheld was the only law there was, and the logical positivists, that any so-called truth that could not be verified by sensory experience was meaningless. Justice was no more than the correct enforcement of the law, and law, in a phrase of Hobbes, was "the command of the sovereign." Rights were what the courts allowed you to do. If the courts forbade you to do something, it was meaningless to say you had a right to do it.

Such positivistic theories were most fully developed in the German-speaking world, and it was there that they first lost their charm. For once Hitler came to power, the courts subservient to him enforced a great many laws that the most hardened positivist could not readily qualify as just: laws dispossessing Jews and authorizing their extermination; laws forbidding any liberty of speech or action; laws requiring children to spy on their parents; laws authorizing imprisonment and execution without public trial; laws conferring total and arbitrary powers on the regime and its police. It is all too well known to need repetition.

After 1933 the Western world realized that it was living in another age of absolutism, or rather, in an age of totalitarian dictatorship far worse than the worst of the old absolute kings; such regimes could be seen to be enforcing a "law" that was the command hardly of a

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"sovereign," but of a cruel and genocidal despot. It was ordinary people who protested: "This cannot be *law*. Law, if it is to deserve the name of law, must respect at least *some* basic rights to which every human being is entitled simply because he is human."

Common sense, once again, was ahead of philosophy. Yet it is only fair to add that the radical forms of positivism, in both legal and political philosophy, were beginning to lose credence in the 1930s. From Vienna, the home of logical positivism, Wittgenstein and Popper brought forth systems sharply at variance with it. And if Hans Kelsen, the most uncompromising exponent of legal positivism, remained the idol of law schools that claimed only to teach what the law *is* and not what it ought to be, there were still some minority voices to be heard in the universities offering a defense of the idea of natural rights: for example, Jacques Maritain, Carl Friedrich, Alexander d'Entrèves, Hirsch Lauterpächt. Today, of course, virtually all the most fashionable legal and political philosophers—H.L.A. Hart, John Rawls, Robert Nozick, Ronald Dworkin—are natural rights theorists of one kind or another, and legal positivism (like logical positivism) is effectively dead.

Here we encounter a new problem: the idea of natural rights having bounced back into favor around the time of the Second World War, and people generally being convinced that they *do* have rights, there began to be no fixed limits to the rights that people claimed or were said to possess. The United Nations is perhaps responsible for a great deal of this. At the time of its foundation, the UN was charged with what Winston Churchill called the "enthronement" of the rights of man. It began by setting up a Commission to specify what those rights were, and what emerged from those deliberations was the Universal Declaration of Human Rights, "passed and proclaimed" by the General Assembly in 1948.

This Declaration is a curious document, much longer than the declarations published in America and France in the eighteenth century. In the first group of articles, the language is that of Locke, Jefferson, and Lafayette. The rights to life, liberty, property, equality, justice, and the pursuit of happiness are spelled out in a readily intelligible form: the Declaration specifies the rights to freedom of movement, to own property, to marry, to equality before the law and to a fair public trial if accused of any crime, to religious liberty, to free speech and peaceful assembly, and to asylum. Slavery, torture, and arbitrary

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detention are prohibited. It does not, however, confine itself to the elaboration of these straightforward and compelling assertions.[8]

The Declaration includes a further set of articles that specify human rights to such things as social security, an adequate standard of living, medical care, rest, leisure, and even "periodic holidays with pay." The difference between these new rights and the traditional natural rights was not unnoticed by those responsible for drafting the Declaration. In the records of the Commission, the first set of articles, twenty in all, are called "political and civil rights," and these further rights are called "economic and social rights." It appears that they were inserted in the Declaration under pressure from the Soviet Union and its allies, who could hardly pretend to uphold the individual's right to liberty and property, but could fairly claim to ensure—or to be trying to ensure—social security, medical services, and holidays with pay for most people under their control.

One obvious consequence of including these "economic and social rights" in the Universal Declaration of 1948 was that it became impossible to pass from words to deeds. Yet that had been the original intention. The enthronement of human rights meant more than the mere specification of them. The Commission set up by the UN in 1946 had been instructed to prepare an "international bill of rights." English-speaking delegates on the Commission drafted a bill in the form of a convention that both named the specific rights to be recognized (they were the traditional civil and political rights) and provided for the setting up of international institutions to correct any alleged violations of those rights. These English-speaking delegations not unnaturally interpreted the expression "Bill of Rights" as meaning an instrument of positive law, and accordingly understood their duty to be that of finding a formula for transforming human rights into positive rights by making them enforceable. The Russian delegation objected, protesting that it was premature to discuss any measure of a binding or judicial nature; the Soviet Union was willing to support a "Bill of Rights" only if it was understood as a manifesto or declaration of rights. Such was what emerged in 1948, and even that did not receive more than grudging acquiescence from the Soviets. A zeal for economic and social rights had by that time infected other nations, and "human rights" became the battle cry of all well-meaning souls (even as "democracy" had been after World War I). More and more was packed into the concept of a human right as politi-

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cians, journalists, and indeed philosophers of all persuasions jostled to present themselves as adherents and exponents of this popular big idea. "We've all agreed about upholding human rights; so let us not be hardhearted in deciding what is to count as a human right."

Unfortunately, we cannot all agree about upholding human rights if we try to introduce as human rights claims that simply cannot be upheld. The UN, having published its Declaration, still demanded something "binding": but the Commission set up to produce that something binding found the task to be impossible. A convention was drafted—indeed two conventions were drafted—promising to be instruments in international law for the protection both of civil and political and of economic and social rights, but the practical effect proved to be negligible.[9] By contrast, the Council of Europe, which produced in 1950 the European Convention of Human Rights, naming only the traditional "political and civil rights," made considerable progress in enthroning human rights. The European Commission and European Court of Human Rights were set up in Strasbourg with full judicial powers to investigate and remedy any alleged breach of the rights named in the European Convention. The existence of these supranational bodies in effect translates, for the inhabitants of West European states, the human rights named in the European Convention into positive rights.[10] The individual can appeal over the heads of his national government to secure redress. This has been possible only because the concept of rights embodied in the European Convention is coherent and rational, whereas that contained in the Universal Declaration is ruinously ambiguous.

The UN Covenant on Civil and Political Rights, "approved"[11] by the General Assembly in 1966, might have done something to correct the situation, to the extent that it was kept separate from the UN Covenant on Economic and Social Rights. In fact, it increased confusion by introducing as Article I the old stalking horse of German nationalists, Victorian idealists, and President Woodrow Wilson: "All peoples have the right of self-determination."

There is a right that does not fit in the pack. All the other rights belong to man understood as the individual human being; in the language of the Universal Declaration they are rights that "everyone" has. Clearly, the right of *a people* to self-determination or anything else cannot be a right in this sense. It is some kind of collective right possessed by a group and not by a person. But what constitutes a

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"people"? Are the inhabitants of Provence or Quebec or Wales or Brittany a people? Each is undoubtedly an ethnic group, distinct in some ways from the other inhabitants of the political society to which it at present belongs. Do the inhabitants of those areas have a right to independence that the governments of France, Canada, and the United Kingdom ought to concede?

There is clearly no uniformity in the way the member states of the United Nations behave in this matter. The inhabitants of Bangladesh were acknowledged to be a people in 1971 and their right to self-determination upheld: yet the inhabitants of Biafra were denied the status a few years earlier, and the great powers of the world lent arms to the Nigerian Federation to thwart the threat of secession. The United States fought a war in the 1860s to resist the demand of the Confederate States for independence, and fought another in 1917 to uphold the claims of various Balkan communities to independence. The UN itself sent forces to protect the South Korean people's right to self-determination, and later sent forces to oppose the secession of Katanga from the Congolese Republic.

Whether any group of human beings constitutes a people seems more often than not to depend on the fortunes of war and the strategic demands of the great powers. In any case, collective rights as such are logically distinct from individual rights: and it is with the latter, with claims and entitlements of every single person, that the problem of human rights is concerned.

We must therefore next consider the questions: What is a right, and what sort of a right is a "human"(or "natural") right? Rights seem to fall into two main categories, rights *tout court,* what you are entitled to but do not necessarily have, and positive rights, what you are entitled to and do have. But a more elaborate analysis of the rights that fall into these two categories is desirable if we are to make sense of talk about human (or natural) rights.

I propose therefore to look further at two very familiar sets of rights, legal rights and moral rights. First, the various types of legal right may be usefully distinguished as follows:

General positive legal rights—Rights that are enjoyed by everyone living under a given constitution or jurisdiction, and upheld by its courts.

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Traditional legal rights—Rights to which members of a given society have grown accustomed, but which may have been removed or diminished by a new regime (e.g., the rights that James II violated after 1685 in England or those which Pétain violated in France after 1940).

Nominal legal rights—Even the least democratic states today tend to have "facade" constitutions that "guarantee" freedom of movement, speech, assembly, and so forth to their people, while in fact the rulers repress any endeavors by individuals to exercise those rights. Since these rights exist on paper only, they cannot of course be classed as positive legal rights. The most that can be said is that these constitutional documents acknowledge—so to speak, in writing—the legitimacy of people's claims to freedom of movement, speech, and so forth.

Positive legal rights of specific classes of persons—Unlike the previous three sets of rights, these do not belong to everyone, but only to those who qualify by their membership in a particular category; for example, the rights of Congressmen, clergymen, doctors, police officers, or of shareholders in a public corporation. Such rights are usually defined by positive law and are related to the discharging of certain duties. If there were no duties attached, they would be better described as privileges.

The positive legal rights of a single person—Here the examples are few because the cases are few; special rights are conferred by law on such people as the president of the United States, the Archbishop of Canterbury, and the queen of the Netherlands. But they are rights that belong to the office rather than to the person. While Valéry Giscard d'Estaing was president of the French Republic, he had all the special rights that the Constitution bestowed on *la Présidence;* when he left, he had none of them; when Edward Windsor abdicated from the throne of England in 1936, his only special legal rights were the favors his successor chose, graciously, to bestow on him.

Such are the main types of legal rights. *Moral rights* it will be convenient to list in a reverse order of generality.

The moral rights of one person only—F.H. Bradley spoke of "my station and its duties"; one may equally speak of "my station and its

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rights." I, and I alone, have a series of moral rights that arise from the fact that I have done certain work, enacted certain roles, paid certain fees, and been appointed or elected to certain offices. Some of these rights are legal as well as moral, but they do not become moral rights simply because the law recognizes them, but mainly because in one way or another I have earned them. The question to be settled in deciding whether something is a moral right is not, "Would the courts uphold the claim?" but "Can the claim be morally justified?" Often we become most conscious of our moral rights just because they are *not* upheld by others. I am inclined to say, "I have a (moral) right to know what is going on in my own house," only when I think that I am not being told.

The moral rights of specific groups of people—This, like the third class of legal rights already discussed, is the kind of right that goes with the enactment of a certain role. The moral rights of parents, for example, tutors, or babysitters would come under this heading. The English Courts have decided that parents, for example, do not have a legal right to be informed if their underage daughters are given contraceptives by the medical agencies of the welfare state, but many parents argue that they have a moral right of access to such information. Moral rights are not bestowed by positive law; they can only be established by an appeal to moral principles or to natural law.

The moral rights of all people in all situations—This is where human rights fit into the scheme. A human right is something that everybody has. They are not rights a man acquires by doing certain work, enacting a certain role, or discharging certain duties; they belong to him simply because he is a human being. As Jacques Maritain put it,

> The human person has rights because of the fact that it is a person, a whole, a master of itself and its acts and which, consequently, is not merely a means to an end, but an end, an end which must be treated as such. . . . by virtue of natural law, the human person has the right to be respected, is the subject of rights, possesses rights. These are things which are owed to a man because of the very fact that he is a man.[12]

Part of the difficulty of justifying human rights lies in their very universality. Moral rights of the first two types I have distinguished are recognizable precisely because they are *not* universal: they belong

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to one individual—or to a limited class of individuals—because that one man, or that class of individuals, has distinguished himself, or itself, from the generality of men by doing something specific, by which he, or it, has acquired the entitlement in question.

The standard way of justifying a moral right is to demonstrate that that right has been earned. This in fact was the method used by Locke to justify the claim, even in a state of nature (where positive law was nonexistent) to a right to property. Man acquired the right to property, Locke argued, by mixing their labor with pieces of the natural world, which God had given them to improve and enjoy.[13] But we cannot use these types of argument to defend human rights as such, notably, the most important of those rights, the rights to life and liberty, which are not earned rights.

Nevertheless, I wish to suggest that one can justify the existence of such universal human rights, provided one does not do what the UN did in 1948, and which fashionable opinion has continued to do: that is, to postulate as human rights universal claims to amenities like social security and holidays with pay. Such things are admirable as ideals, but an ideal belongs to a wholly different logical category from a right. If rights are to be reduced to the status of ideals, the whole enterprise of protecting human rights will be sabotaged.

A human right, by definition, is something that no one, anywhere, may be deprived of without a grave affront to justice. There are certain actions that are never permissible, certain freedoms that should never be invaded, certain things that are sacred. If a declaration of human rights is to be what it purports to be, a declaration of universal moral rights, it must be confined to this sphere of discourse. If rights of a different order are introduced, everything is immediately slackened: the sharp, clear imperative becomes a vague wish. "It would be a splendid thing," people might say, "for everyone to have holidays with pay, a splendid thing for everyone to have social security, a splendid thing to have fair trials, free speech, and the right to life—and one day, perhaps, all these beautiful ideals will be realized."

Thus the effect of a universal declaration that is overloaded with affirmations of economic and social rights is to push the political and civil rights out of the realm of the morally compelling into the twilight world of utopian aspirations. Indeed, the UN itself was forced to admit that all that had been produced was "a common standard of achievement." And yet nothing is more important to an under-

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standing of a right than to acknowledge that a right is *not* an ideal.

Rights bear a close relationship to duties: and the first test of both is that of practicability. It is not my duty to do what it is physically impossible for me to do. You cannot say it was duty to have jumped into the Charles River in Cambridge to rescue a drowning child if I was nowhere near Cambridge at the time the child was drowning. What is true of duties is equally true of rights. If it is impossible for a thing to be done, it is absurd to claim it as a right.

The traditional political and civil rights are not difficult to institute. For the most part, they require governments, and other people generally, to leave a man alone: let him live as he decides to live and enjoy what is his; let him speak, meet with others, publish what he wishes, and worship as he chooses. Do not injure, arrest, or imprison him. To respect a man's right to life, liberty, and property is not a very costly exercise. As Locke and others have explained, it requires a system of law that recognizes those rights to protect those rights. But rulers are not called upon to do anything that it is unreasonable to expect of them.

The problems posed by claims to economic and social rights, however, are of another order altogether. How can the governments of those parts of Asia, Africa, and South America, where industrialization has hardly begun, be reasonably called upon to provide social security and holidays with pay for the millions of people who inhabit those places and multiply so swiftly? Political and social rights can be secured by fairly simple legislation. Since those rights are largely rights against government interference, the greatest effort will be directed toward restraining the government's own executive arm. But this is no longer the case when economic and social rights are concerned: for a government to enforce them, it would need to have access to great wealth, wealth that most governments of the world have no means of acquiring.

Another test of a human right is that it must be a universal right, one that pertains to every human being as such—and economic and social rights clearly do not. The right to a holiday with pay, for example, can only be enjoyed by people who are paid. It *is* a right of a certain kind (as I shall attempt to explain), but it is *not* a universal right, simply because by no means do all human beings belong to the class of persons receiving wages, stipends, salaries, or other regular allocations.

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A further test of a human right, or a universal moral right, is the test of paramount importance. Here, the distinction is less definite but no less crucial. And here again there is an analogy between rights and duties. It would have been my duty to rescue the drowning child in Cambridge if I had been in Cambridge at the time: but it is not, in the same sense, my duty to give Christmas presents to the children of my neighbors. This difference is obscured by the crude utilitarian philosophy that defines moral goodness in terms of the greatest happiness of the greatest number, but common sense does not ignore it. Common sense knows that fire engines and ambulances are essential services, whereas amusement parks and holiday camps are not. Liberality and generosity are reckoned to be moral virtues, but they are not moral duties in the sense that the obligation to rescue a drowning child is.

It is worth considering the circumstances in which ordinary people find themselves speaking of human rights. I have already mentioned the atrocities of the Third Reich that prompted the revival of talk about natural rights in the 1930s. Then there is the practice, in the Soviet Union, of interning political dissenters in labor camps or psychiatric clinics; the practice of the government of Argentina in having its security services kidnap and exterminate radical activists; the practice of the government of South Africa in forbidding people of certain races to have access to places, property, and electoral rolls. Practices of this kind are not instances of failures to do good or of falling short of an ideal; they are instances of gross injustice.

An ideal is something to be aimed at, but which, by definition, cannot be immediately realized. A right, on the contrary, is something that can and, from a moral point of view, *should* be respected here and now. If it is violated, justice itself is abused.

To deny that economic and social rights are human rights is not to deny that they may be rights of another kind. In fact, they can be seen to belong to that class which I have distinguished as the rights of a certain group of people. The welfare state is in effect a social insurance system organized by the government and extended to incorporate in its membership every resident of the country. In a private insurance system, such as Blue Cross-Blue Shield, an individual acquires a right (both legal and moral) to relief in sickness by subscribing to the fund. This right is thus an *earned* right, a right earned by the payment of a premium. Under the state system of Sweden, Great

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Britain, and other nations that have introduced *l'état providence*, every individual paying taxes directly or indirectly is enrolled (whether he likes it or not) in a similar insurance system. The taxes are part of his subscription or premium. Hence, his entitlement to benefits under the scheme, in times of sickness or adversity, is not a universal human right, but an earned or acquired right.

There is no difficulty, as I have already said, in justifying the kind of right that is acquired, and it does not matter whether that acquisition is by purchase, gift, inheritance, or work. Since human rights are not acquired by any of these means, but, so to speak, inhere in the human person, other arguments are needed to justify their existence.

There is a lot to be said for the traditional view that natural rights are conferred by natural law, for in asserting the existence of human rights, one is saying that there is something about man's nature that entitles him to a respect that is different from that owed to animals or angels. Natural rights can be seen in their origins as claims that everyone naturally makes. No one wants to die a violent death or be injured. No one wants to be hindered in his natural movements and in the utterance of his natural sentiments. Furthermore, man is exceedingly vulnerable. Unlike lobsters and porcupines, homo sapiens has few physical defenses in his own body. As Hobbes reminded us, the strongest man on earth can easily be killed in his sleep, or injured or captured.

It is sometimes suggested further that it is this vulnerability which converts man from an egoistic into a social animal. For his own preservation, a man must live under a system of rules, which will assure peace for himself and his neighbors. This is because man is without the instincts that impel ants and bees to perform a useful social role. Men have independent impulses and critical minds, so that even though man cannot live safely outside society, he can live inside society only if there is some agency to compel him to act in a neighborly way (or at least deter him from acting in an unneighborly way). Natural law is an attempt to explain the basic principles that all societies should incorporate into their systems of positive rights if those systems are to work as societies and be fair, answering each men's natural needs and reasonable claims.

Rousseau suggested that morality begins with human society. At any rate, man's understanding of morality is something he must owe to the experience of living in society. In society, a man can make

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claims to moral entitlements. He can say not only that he does not wish to be injured, but that he ought not to be injured, because society is based on the implicit understanding that no one will be injured so long as he does not injure anyone else. Society creates at the same time a duty not to injure one's neighbor, and a right not to be injured by him.

Nature, again, enters into our earliest conception of a right to freedom. When Epictetus speaks of his freedom, he describes it in this way: "I go wherever I wish; I come from whence I choose."[14] The Greek word he uses for freedom is *eleutheria,* and we find that the etymology of this word derives from "to go where one wills."[15] The Greeks most commonly contrasted their freedom to a condition of being bound or tied, and being, for this reason, unable to move.[16] To be free is to be unimpeded in the exercise of the natural desire to move.

Professor C.B. Macpherson expressed it well:

> Any doctrine of human rights must be in some sense a doctrine of natural rights. Human rights can only be asserted as a species of natural rights, in the sense that they must be deduced from the nature (i.e., the needs and capacities) of men as such, whether of men as they are now or as they are capable of becoming.[17]

So we must conclude that Bentham was wrong; it is *not* nonsense to talk about natural rights. Natural rights can be understood as universal moral rights, arising from claims man naturally makes. But of course it is not enough to just *have* a moral right; one wants to have that right respected. As Professor H.L.A. Hart has said, "Men speak of their moral rights mainly when advocating their incorporation in a legal system."[18] The demand is for the translation of moral rights into positive rights.

To make this demand is not to make anything so vague and utopian as a statement of aspirations or ideals; rather, it is to indict, in the name of justice and morality, all those authorities or powers that deny men's freedom, security, dignity, and so forth. It is inevitable that the rights of one individual will collide, from time to time, with those of another, and there may even occasionally be a conflict between the rights of the individual and the security of the state. But security in general is not something that is at odds with human rights, because it is one of the human rights. The security of each is

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bound up with the security of all, and the private enjoyment depends on the public enjoyment. The demand for liberty and security is not the demand for two things that can only with difficulty be reconciled: it is part of two things that naturally belong together. One of the classical arguments in favor of human rights was that a free country is safer than despotism. History gives us good grounds for continuing to think that this is true.

ENDNOTES

[1]See D.D. Raphael, *Political Theory and the Rights of Man* (London: Macmillan, 1967), p. 54.
[2]H. Pirenne, *Economic and Social History of Medieval Europe* (London: Routledge and Kegan Paul, 1952), pp. 46ff.
[3]A.P. d'Entrèves, *Natural Law* (London: Hutchinson, 1951).
[4]See A.L. Corbin's introduction to Hohfield's *Fundamental Legal Conceptions* (New Haven: Yale University Press, 1964).
[5]*Anarchical Fallacies,* cited by E. Kamenka in *Human Rights* (London: Edward Arnold), p. 10.
[6]Edmund Burke, *Works* vol. 5 (London: Rivingtons, 1852), pp. 180-81.
[7]Cited by M. Cranston in *What Are Human Rights?* (New York: Basic Books, 1973), p. 3.
[8]For the full text, see Raphael, *Political Theory and the Rights of Men,* pp 143-48.
[9]"United Nations influence is small in human rights questions," wrote Professor R.N. Swift in the *Annual Review of U.N. Affairs* (New York: 1969), p. xi.
[10]See A.H. Robertson, *Human Rights in Europe* (Manchester: University Press, 1964).
[11]In the absence of ratifications, this "approval" had very little practical effect.
[12]*The Rights of Man* (New York: Scribner's, 1944), p. 37.
[13]*Second Treatise of Government,* Sections 32 and 35.
[14]Epictetus IV, I. 34.
[15]*Etymol. Magnum,* 329. 44.
[16]See Max Pohlenz, *Freedom in Greek Life and Thought* (Dordrecht, The Netherlands: Reidel, 1966), p. 181.
[17]See Raphael, *Political Theory and the Rights of Man*, p. 14.
[18]Ibid., p. 78.

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Stanley Hoffmann

Reaching for the Most Difficult: Human Rights as a Foreign Policy Goal

As a problem of policy, the promotion of human rights can be envisaged at two different levels. One, with which several essays in this issue are concerned, is that of the domestic political system. The defense of these rights remains above all a matter of internal arrangements. It was through domestic battles between, on one side, individuals and groups determined to obtain legal recognition and effective protection of their claims, and, on the other, a hostile state and other groups resisting such demands, that progress was achieved in Western democracies. This was the case of the civil and political rights that have their roots in eighteenth century liberalism, and of the economic and social rights defined in the nineteenth and twentieth centuries by a variety of intellectual currents, socialist and Christian in particular. But the protection of human rights also became a matter of international relations after the Second World War, when various codes were drafted and the components of an international regime, and of various regional regimes as well, for safeguarding these rights were set up.

In his essay, John Ruggie asks whether the acceptance by most states of the principle that human rights are a legitimate international issue has amounted to a shift in the principles of legitimacy, mechanisms of governance, and social framework of the international community or society. His answer is negative, and I agree with his analysis. My concern here differs from his in three ways. His approach is essentially empirical; mine is primarily normative. He tells us how things are (or what they are not); I present a plea for change toward

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the goals we have not reached, and I make a case for trying to reach them against enormous odds. He focuses on the international milieu; I look at the actors in this milieu and at human rights as a morally and politically necessary subject for the foreign policy of states. He shows the elements of continuity in world affairs—before and after the "reemergence of the individual in international relations"; I try to argue that there is a great deal of discontinuity—not between a world of competing sovereign states and a (still distant) world in which the rights of individuals are recognized by, and protected from, their states, but between the international systems of the past, in which those rights did not enjoy international recognition, and the current international system, in which their official "legitimacy" coexists and conflicts with colossal violations.

THE PREDICAMENT

The distinction between the traditional Machiavellian ethics of statecraft and a more cosmopolitan ethic is an important one for our discussion.[1] The former is a codification of sacred egoism: the statesman should concern himself only with the common good of his community. The latter asserts that his moral duties do not stop at the borders of his polity. The former, insofar as it sees the wisdom of introducing some order into the jungle of states, nevertheless recognizes only the mutual rights of states: it is an ethics of reciprocity among sovereign entities. The latter includes obligations toward individuals in foreign countries; humanity, not the (partial) society of states, is its constituency.

The promotion of human rights to the agenda of international politics is part of an effort at moving beyond Machiavellian statecraft. The United Nations Declaration on Human Rights, the two UN Covenants, and the various regional instruments reflect a sense of moral obligation after the crimes and horrors of the Second World War. In this area, the creation of a legal network was particularly important. The relations between moral and legal rights and duties are complex. In international affairs, there can be moral obligations despite the silence of the law. The various imperatives recently proclaimed by the American Bishops' pastoral letter[2] concerning the use of nuclear weapons go far beyond the prescriptions and proscriptions of either the UN Charter or the conventions that regulate the

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jus in bello. The latter do not deal explicitly with nuclear weapons; the former certainly does not rule out a resort to these weapons in retaliation against nuclear or conventional aggression. It often happens that the human conscience, including that of statesmen, is ahead of laws or treaties and customs, and expresses itself, not through legislation, but through unilateral policy decisions or diplomatic understandings.

In the field of human rights, however, legalization is indispensable. It is the prerequisite to the empirical efficacy of moral obligations; it makes it possible for this sense of moral duty to have political effects. If I, as a statesman, sign a treaty in which I accept the legal obligation to respect certain human rights, it means that I acknowledge not only a domestic responsibility, but a "cosmopolitan" one as well: I recognize that you, too, have a right to see to it that I respect these rights. This is a major breakthrough in a world in which previously you were entitled only to ensure that I treated fairly your nationals settled in or visiting my country. If *you* sign such a treaty and don't carry out your legal obligations to your people, I can, as a cosignatory, raise the issue of your neglect or violation. Thus the significance of a legal code here is double. First, the treatment of individuals (including nationals) is now a legitimate concern of the members of the international society; the notion of sovereignty, the very cornerstone of the "Westphalian order"—which essentially reduced international affairs to arrangements and conflicts about and among states, and left almost everything happening *within* a sovereign state to its jurisdiction—has been breached. Second, international law now grants not merely states, but individuals as well, a set of rights: they are recognized as being both the citizens of their states and entitled to certain rights, whatever their states' practices.

Without such a legal code, the so-called conscience of mankind, often aroused in the past by mass atrocities in distant lands, would lack a handle. This does not mean that there is necessarily perfect correspondence between moral and legal obligations. A statesman, or indeed a citizen, of a country that has signed any of the legal codes may well believe that the legal provisions exceed what can be morally required of his state (a fortiori, of a foreign state). For instance, can one morally require the government of a poor country to provide for the "periodic holidays with pay, as well as remuneration for public holidays" prescribed by Article 7d of the Covenant on Economic,

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Social and Cultural Rights? Conversely, one may believe that one's moral duty exceeds the limits of a somewhat niggardly code. Tom Farer points out in his essay that the American Convention on Human Rights has only one, very broad and vague, article on "progressive development" of economic, social, and cultural rights. But whereas, in the realm of distributive justice, a rich state can carry out a moral duty to the poor abroad by embarking on a policy of economic assistance, or by opening its borders to the products of poor nations, and can even try to see to it, by various strictures, that the aid it grants does indeed reach the destitute in that country, in the realm of human rights, the barrier can only be crossed if the state that wants to help foreign victims of violations can use an international legal document as a crutch or a club or a ladder.

Nevertheless, the revolutionary significance of the international legal network has failed to transform either the basic realities of international politics or the conditions in most countries. This is so because of a triple predicament: the legal framework is shaky; the distance between the normative order and the political one is huge; and the opportunities for internal improvement of the latter are limited.

The network *is* a very weak one, and it suffers from many characteristic flaws of contemporary international law. Several of the rights that are to be protected are defined so vaguely as to make violations easy. We are all familiar with the difficulties of self-determination: *What* is the "self" that is entitled to it? *Who* determines either what it is or under what conditions self-determination will occur? Does it necessarily mean statehood?—and so on. And yet, both UN Covenants merely recognize a "people's right to self-determination." Similarly, the Covenant on Civil and Political Rights guarantees "equal protection of the law" and outlaws discrimination: these are anything but self-evident notions.

Also, and more important, many of the rights are granted in a way that makes excessive restriction or even elimination legally possible. Some rights are only provided within the limits set by national legislation; others are saddled with exceptions through which whole police forces may pass (there is a right to freedom of expression, but propaganda for war, or advocacy of national, racial, or religious hatred that "constitutes incitement to discrimination, hostility or war"

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shall be prohibited by law). Various rights can be restricted for reasons of national security, public safety, or public order. The Helsinki agreements acknowledge the principle of noninterference in internal or external affairs of the signatories.

Above all, there are all the weaknesses of the mechanisms of enforcement that John Ruggie reviews: the economic and social Covenant, given the nature of the rights it recognizes, is largely left to the signatories for implementation; the procedure of complaints remains predominantly in the hands of states, not individuals; the various international bodies lack powers of enforcement, and so on.

The fact that only fourteen states have adhered to the interstate complaints procedure set up by Article 41 of the Covenant on Civil and Political Rights points to a second predicament: the abyss between the legal network and the states' political practices. "At least there is now an international law to be violated."[3] But the scope of the violations tells us much more than the obvious fact that we still live—in terms of power—in a world of states that defend their sovereignty, use human rights primarily as a tool of warfare against each other, and severely restrict the capacity of individuals to escape from their national cage or to call in relief from outside.

Tension between the international normative and political orders is neither surprising nor new. There is always tension between the legal codes and the moral rules that prescribe how people *ought* to behave and the way they *actually* do. This gap usually reflects the subjects' fallibility. Sometimes it results from their desire to change the norms if these have become obsolete or harmful, or if they no longer correspond to the prevailing new sense of what is right. The tension also serves as a goad to orderly progress, when the rules embody new ways of arranging social affairs or recognize new claims and responsibilities that meet the resistance of entrenched interests. But when the gap between moral and legal norms and practice is so great that it can be described as an abyss, it has then become pathological. It happens in two typical cases: when power is lawless, and when there is anomie. In the first instance, state power recognizes no limits; it installs the rule of arbitrariness, either in disregard of existing law or behind the cloak of a pseudo-law that provides it with all the authorizations it needs, and removes from its victims all the protections they need—something like the famous, interminable Article

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58 of the Soviet criminal code under Stalin. It can also be the case of a hegemonial power mighty enough to disregard moral and legal restraints in its conduct of foreign affairs, and to deal with weaker states the way Athens treated Mytilene and Melos during the Peloponnesian War. The second instance—anomie—is that of a civil war in which, as Thucydides remarked, "words change their ordinary meaning," and moderation becomes "the cloak of unmanliness . . . [and] frantic violence the attribute of manliness."[4] It is also that of the present international system.

How, the reader might ask, does it differ from systems of the past? After all, we have had no general war for almost forty years; the actors—five of whom have nuclear weapons, many of whom are new, poor, inexperienced, and unsteady—have managed, on the whole, to keep their conflicts limited, and to find in the fear of physical destruction and the intimacies of economic interdependence both a basis of cooperation (however grudging or competitive) and a reason for developing various kinds of international law. Is the gap between the latter and the behavior of states any wider today? My answer is "yes," partly because international law itself, in reaction to the excesses of their behavior—as a magical reassurance against the evils of practice (or the practice of evil)—has become so much more demanding and so much less accommodating of national sovereignty than it had been in the nineteenth century. This is particularly true in the two areas that are at the core of sovereignty. One is the right to wage war, intact in nineteenth century law, restricted after the bloodbath of the First World War, and severely curbed in the UN Charter, which recognizes its legitimacy only in self-defense or in collective resistance to aggression.[5] The other is the state's right to treat its subjects as it sees fit.

In both these domains, the gap between the new international law and the practice of states is enormous. In the realm of force, at least, the abusive resort to the excuse of self-defense, the imaginative ways of disguising or diluting outright aggression, or of using the ambiguities that surround such concepts as "territorial integrity" and "political independence" when applied to states with unsettled borders and with shaky or puppet regimes—in other words, all the attempts to get around the ban on the use or threat of force—have not yet led to a global war or even to an unlimited war in the Middle East. The leaky dam of the Charter is buttressed by the fear of a nuclear holo-

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caust. But in the realm of human rights, there is no comparable, if bitter, consolation. Here, the differences with the past certainly do not lie in the novelty of human rights violations. In the nineteenth century, the massacres of Armenians in the Ottoman Empire may have provoked high emotions, but the behavior of colonial powers (or colonial sovereigns like Belgium's King Leopold) in Africa or Asia was often brutal and racist (indeed, the protection of the Indians of America colonized by the Spaniards had already been Vitoria's concern in the sixteenth century). Many of the "civilized" countries of the nineteenth century had repressive governments. The differences lie elsewhere, not merely in the absence of an international network of recognized human rights before 1945, but also in the end of the colonial era (which means that standards of humanity—i.e., of public morality—that even Liberals often tended to reserve to the governments of "civilized" peoples are now assumed to be valid for the regimes of all mankind); and in the sad fact that, unlike the trend of *aspirations,* which went up, the trend of *expectations* is going down. In the nineteenth century, the way in which the Turkish sovereign treated his subjects and the pogroms that occurred in Tsarist Russia were seen not only as deplorable, but as a mark of decadence as well. In the present international system, comparable behavior is often considered morally and legally reprehensible, but empirically normal (we all know the phrase: moderately repressive). In the nineteenth century, slavery was being abolished, and revolutionary movements demanding national self-determination and the rights associated with self-government were strong, won many victories, and expected to prevail over the forces of prejudice, absolutism, and authoritarianism. Today, it has become clear that self-determination does not necessarily breed either satisfaction or self-government; and the number of countries that can be called democratic, even if one adopts a rather modest or Schumpeterian definition of democracy (one that focuses on the free competition of political candidates for election), is extremely small. The number of countries that respect all the rights defined in the UN Covenants is smaller still, and the prospects for improvements are dim. We may now aspire to a kind of legal and moral perfectionism; but the expectation of progress is gone.

Thus the incorporation of human rights into the international moral and legal order coincides with the dismal reality of human

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rights violations, just as, after 1918, the fall of the legitimacy of war from the international normative order, and the advent of collective security principles in it, coincided with the age of aggression and appeasement. When the tension becomes an abyss, what disappears is the pressure that the normative order usually puts on the behavior that this order excommunicates, behavior that may previously have been either not recognized as bad by that order or deemed perfectible only by a different normative order altogether. (In the case of human rights, insofar as they were acknowledged at all, it used to be only in liberal domestic systems.) And the normative order itself, when practice contradicts it blatantly and repeatedly, usually ends up collapsing—which means that the law ceases to be taken seriously. A violation is no longer perceived as such, nor are the provisions of the law any longer seen as conferring genuine rights and duties: we are merely in the realm of rhetoric, not of norms. The commands that the law expresses are recognized no longer as moral imperatives, but as hypocritical disguises or superstitious incantations aimed at keeping the evil eye away. For any normative order to deserve being called by that name, it must partake both of the realm of "oughts" and of the empirical one: it must be *at least in part* a set of rules *of* actual behavior; it must not only ask for, but actually inspire, some practice. Otherwise, it withers away.

To be sure, as evidence of that "germ of universal consciousness" mentioned some time ago by Raymond Aron, there is a new official sensitivity to the charge of violating human rights. As Patricia Derian, President Carter's Assistant Secretary of State for Human Rights, put it, "All countries say that they are great defenders of and believers in human rights. . . . No country really admits it is a human rights violator."[6] This is the usual tribute of vice to virtue, of immoral or amoral practice to moral obligation. On the other hand, there are structural elements in the present society of states that make massive violations inevitable. Once more—as in the realm of force after 1918—the legalization of concern reflects both a moral revulsion against reality and the desire to exorcise it *faute de mieux,* that is, in the absence of any political possibility of removing the fundamental causes of evil (the "international regime" of collective security put in place by the League, and later by the UN, turned out to be no stronger than the human rights regimes discussed by John Ruggie).

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These structural elements are of two kinds. One could be called the exacerbation of traditional violations. Three categories stand out. First, tribal or ethnic conflicts within countries have multiplied, in a world in which the quite exceptional legitimacy granted by all states, whatever their ideology, to the principle of self-determination only emboldens groups that feel oppressed by their current masters to seek autonomy, and encourages those masters to get rid of irredentist or unassimilable minorities. Thus we have witnessed, recently, massacres of Tamils by Sinhalese in Sri Lanka, Moslems by Hindus in Assam, Hutus by Tutsis in Burundi, a political conflict with tribal overtones between Mugabe and Nkomo in Zimbabwe, the expulsion of ethnic Chinese from Vietnam, the murderous fragmentation of Lebanon. Such violations are always worse when the ethnic tensions are stirred up by psychopathic rulers such as a Bokassa and an Idi Amin.

A second traditional category consists of the traumas of self-determination itself—of the massive violations that accompany the struggle of nations to achieve or preserve independence, or the clash of intensely nationalist groups that claim the same territory. The litany is familiar: the civil war in Biafra, the massacres leading to the independence of Bangladesh, the bloody, interminable contest between Indonesian militant (and military) nationalism and the independence movement in East Timor, the South African raids into neighboring countries in the battle against Namibian nationalism, the fight of the Eritreans against the Ethiopians and of the Afghans against the Soviet Union, above all, the Palestinian issue and its human rights ramifications—terrorism on one side, and on the other, the denial of various human rights in the occupied territories and last summer's massacres in Palestinian camps.

A third traditional category comprises the dismal effects of revolutions (or failed revolutions): the massacres of Communists and alleged Communists in Indonesia in 1965 (a mix of ideological and ethnic barbarism, since many of the victims were Chinese), the violations of human rights that accompanied and followed the fall of the Shah of Iran and those that accompanied the fall of Somoza. Ethnic conflicts, wars of national independence, and revolutionary brutalities are not new; but the global extension of the principle of self-determination and of ideological conflicts—the diffusion of Western ideas (such as Marxism-Leninism) and the reaction of anti-Western

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movements (such as Islamic fundamentalism) to the diffusion of Western culture and practices—has widened the battlefield.

The second structural element is more original; it is the institutionalization of cruelty. World moral anomie, which undermines the new international normative order, results not only from the chaos bred by the traditional conflicts I have just described, but also from the existence of regimes that have turned the domestic legal order into tools of power at the expense of human rights. This is the more serious and intractable source of violations and of the ineffectiveness of the various international and regional regimes. One can imagine that many of the battles of tribes and ethnic groups, that most of the conflicts over self-determination, will be resolved, and even that—as has usually happened in history—ideological hatreds will lead to cynicism and the armistice of exhaustion. It is more difficult to imagine the destruction of the domestic fortresses of inequity—or to believe that it will be achievable without further colossal violence.

Three kinds of regimes constitute such fortresses. One can be called institutionalized inequality; it is the apartheid system of South Africa. Not only are more than four fifths of the land reserved for the whites, not only are the resources available for health and education of the black majority pitiful, but the blacks are deprived of both the economic and social and the civil and political rights defined in the UN Covenants. They have no political possibilities of self-expression and participation, no free trade unions, no right to racially mixed marriages; above all, they are submitted to the demeaning system of passes described so well by Athol Fugard in his play *Sizwe Bansi is Dead*. The government can detain indefinitely anyone suspected of terrorism, and impose restrictions on the freedom of expression and movement of political suspects; acts against apartheid are criminal offenses. The number of deaths occurring in prison has been considerable. Here, clearly, the law has no higher function than preserving the separation of the races, reducing the blacks to their manpower role, and covering violations of human rights with the mantle of apartheid "legality."

The second case is one of institutionalized political oppression. I am referring to regimes based on the Leninist-Stalinist model. This model has been enforced ununiformly; even in the Soviet Union, where the apparatus of terror has been partly dismantled, it is no

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longer applied fully. But this model entails depriving the people of their civil and political rights in exchange for some economic and social achievements. In particular, there are no rights of political expression and free association; sharp restrictions are imposed on the independence of the judiciary, on the fairness of criminal procedures (cf. the use of psychiatric hospitals against some dissidents in the Soviet Union and the harsh penalties inflicted on others), as well as on freedom of movement. While lip service is sometimes paid to the concept of human rights, the system is usually rationalized as one that puts an end to the "bourgeois" conflict between the individual and the state. (Hence, Soviet abstention on the vote of the UN General Assembly adopting the Universal Declaration of Human Rights in December 1948. The Russian delegate argued that "in a society where there are no rival classes, there cannot be any contradiction between the government and the individual since the government is in fact the collective individual."[7] In such a conception, it is clear that a dissident or deviant can only be seen as either an enemy of society or insane.) Civil and political rights are treated as purely formalistic—empty, unless a material base of economic and social services is provided. But these are indeed only *services:* they are granted and organized by the state and can therefore be taken away by it. They are not rights that individuals or groups can claim. Those who—correctly—point to the achievements of communist regimes in matters of health, social security, education, or housing sometimes fail to note the difference between a right that can thus be fought for (even if it is a right to a service that only the state can provide) and a mere grant of benefits by an all-powerful state. The two categories of rights recognized by the UN are interdependent: civil and political rights are often meaningless to people living below the subsistence level or in traditional structures of dependence and social oppression, but economic and social rights cannot be made effective unless individuals and groups can express themselves, mobilize and agitate for their realization, act in courts, and seek redress.

The Leninist-Stalinist model has led to the most extensive violations of human rights whenever the national circumstances approximated those of a civil war. In China and in Vietnam, when the communist regimes came to power after a protracted struggle, whole classes of people were submitted to "reeducation," forced labor, and humiliation; the horrors of the Pol Pot regime in Kampuchea are well

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documented. Indeed, such regimes sometimes create a kind of deliberate civil war to carry out their ideological program or to preserve their ideological vigor. This is what Stalin did in the 1930s when he destroyed the Kulaks through repression and famines, and purged the party and army; this is what the Chinese Cultural Revolution of the mid-1960s amounted to.

The third type is institutionalized state terrorism. As in the previous one, ideology is at the root of the disease, but in a different way: here, the militant ideologues are in the opposition (often in clandestine opposition). It is the threat created by insurgents or by (usually) leftist movements that serves as the pretext for a state response which, under the cloak of national security, entails brutal repression, extensive control of social organizations, and the suspension of many *civil and political rights. The plea of necessity or supreme emergency* is thus moved from its usual domain—foreign affairs—to the domestic scene. In Brazil after the 1964 coup, in Chile after the fall and murder of Allende, in Argentina after 1976, in the Philippines under Marcos's rule, in Turkey during the past few years of military government, in the Shah's Iran, one witnessed neither *exceptional* measures nor *limited* restrictions to rights, but a pattern: arbitrary arrests, disappearances, the widespread resort to torture (admirably described by Jacobo Timerman), the taming of institutions that could have harbored or fostered opposition. In many of these cases, the violations of human rights have been accompanied by an often savage economic policy of laissez faire, perpetrated under military rule, with the officers wrapping themselves in the mantle of nationalism and quite naturally practicing their expertise against their enemies.

As in the case of the Leninist-Stalinist regimes, these violations are most brutal when the opposition has been able to organize an insurgency and conditions of quasi-civil war exist, as, for instance, despite a facade of elections, in El Salvador, and also in Guatemala. There, according to Amnesty International, twelve thousand unarmed civilians have been massacred since 1978; under the previous military ruler, whole villages have been destroyed by ground and air raids, and large numbers of people have been removed from their homes.

These political realities point to the third predicament. Not only are the legal nets full of holes and the gap between law and practice enormous, but the possibility of narrowing it through political action

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at the international level is extremely small. This is so for two sets of reasons: the nature of the international system and the moral-ideological significance of human rights.

We find a good way of measuring the obstacle constituted by the international system in Kant. In both his *Idea for a Universal History* and the essay *Eternal Peace,* we find that he believed there could be no peace without a league of Republican, that is, constitutional, states—states that provide their citizens precisely with the kind of autonomy and chances for self-fulfillment that the legal provisions on human rights in national constitutions and international documents try to promote. He considered the creation of such regimes to be "the most difficult problem and at the same time the one which mankind solves last." But their establishment "depends upon the problem of a lawful external relationship of the states and cannot be solved without the latter." In other words, there can be no peace without constitutional regimes, but no such regimes without peace. In a world of intense interstate conflicts, the fate of regimes respecting human rights cannot be good: the "state of war," which inflicts on the polity "the very same evils which oppress individual human beings and which compelled them to enter into a lawful civic state," would soon disturb or destroy the harmonious polity. On the other hand, a league of states for the abolition of war requires a "republican" civil constitution in these states: "Under a constitution where the subject is not a citizen and which is therefore not republican, it is the easiest thing in the world to start a war. The head of state is not a fellow citizen but owner of the state."[8]

Thus the domestic and the external problems—let us call them a political regime of human rights and peace—must be solved simultaneously. Kant's intriguing philosophy of history tells us that "the excessive and never-ending preparation for wars, and the want which every state even in the midst of peace must feel," will force governments to do what reason suggests: enter into a union of states for peace. But he also told us that such a union will last only if the states have the right constitution. We are therefore left in a very uncomfortable position. This (necessary) union will make it *possible* for states to become enlightened (since their resources will no longer be wasted on expansion and defense): what Kant also calls "a pathologically enforced coordination of society" will thus finally *be able* to "transform it into a moral whole." Both the union and the enlight-

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ened commonwealth appear as moral duties *as well as* objectives of "a hidden plan of nature" to produce concord through conflict. But this union will remain fragile *unless* its members have the right regimes, and those regimes can't get rooted, or survive, unless there is peace. A first reading of Kant suggests that (thanks to nature's plan) a perfect constitution ("the only state in which nature can develop all faculties of mankind") and "a perfect civic association of mankind" will both be achieved: all good things coming together. A second reading, alas, suggests a vicious circle.[9]

Let us transpose this conundrum into the present world scene. The absence of peace serves to justify, and in some cases engenders, regimes that violate human rights; they can blame the troubles that "require" repression on external agitators or explain that the conditions of "encirclement" in which they operate allow no relaxation of state power and control. Interstate tensions require soldiers, and soldiers often take over their own countries. The very strength and spread of such regimes, many of which feel profoundly insecure and act accordingly on a world stage marked by a profusion of interventions, make a peaceful international order difficult to establish, and a successful international regime of human rights hard to conceive, as well. As Michael Doyle has pointed out, only liberal states have succeeded in creating a zone of peace: they have not been at war with one another, and have achieved both of Kant's (and nature's) goals.[10] Kant was right in this respect; but while he stressed the interdependence of the solutions to the two problems of human rights and peace, he was also right in stressing the decisive character of the *domestic* system. Whether a country observes human rights or not depends, ultimately, not only on whether external peace allows for domestic civility or on favorable internal circumstances, on the whims of passing rulers, but also on the nature of the economic system, of the social structure and values, and of the political regime: the state of human rights is the mirror of the polity. Enforcement of the international normative order requires certain internal changes. Can we really expect these changes to come through the processes and mechanisms of international politics? Indeed, would even a world at peace (either because of the fear of nuclear war—the hidden plan of nature—and/or because of respect for the normative order curtailing the use of force) be capable of transforming its members? The dilemma is obvious: the effectiveness of the international norma-

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tive order of human rights requires both a genuine (not just a rhetorical) consensus on the values that inspire this order and a world enforcement system—in other words, an end of international relations as we know them. The transformation of international relations and of domestic regimes that the world recognition of human rights should logically engender presupposes a revolution in the structure of the international milieu. Not even the kind of halfway house between a system of sovereign states and a world federation, suggested by Kant, would suffice (his League had no powers of execution, and its "cosmopolitan law" was reduced to hospitality).

Not only would an effective international order of human rights require, as a precondition, a decline in the role of states and the emergence of powerful collective mechanisms or regimes, but it would also, in the long run, amount to a revolution in the nature of most political regimes. The idea of human rights is dangerously subversive of many existing polities, for two reasons. The first is that it pretends, and appears at first sight, *not* to be so revolutionary. Political regimes are not being asked, by international law, to cease being communist, or socialist, or single party, or economically laissez faire; they are "merely" being asked to observe or to set up rights to which they have themselves, in various treaties or even in their constitutions, subscribed. What could be more reasonable? But the fact is that if these rights were effectively granted, the nature of the regime would be drastically transformed. It is a mistake to look at them as a mere set of guarantees given to individuals and groups, which they should and could enjoy in *any* state. Even when they aim at creating a sphere in which no state can intrude, *they are all political rights,* they concern individuals as citizens, and groups as actors, in the polity. As Claude Lefort has suggested,[11] if they were only "private" rights, a state could always justify a transgression by arguing that the necessities of power or revolution (or, I would add, those of the "state of war") require a temporary displacement of the private by public needs. But if they are seen as political rights, then they become the basis for a polity that has very little in common with many of the political regimes of today. The notion of the sacred sphere of civil rights, like that of a state which fulfills economic and social needs by erecting them into rights, is a political notion that defines a certain kind of polity and excludes others.

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Indeed, human rights are subversive, in the second place, because, under the cloak of a demand for basic guarantees, they constitute a program for a politically liberal, economically social-democratic (or welfare-liberal) commonwealth. This, of course, explains the hostility of all kinds of tyrannies, and the reticence, in the United States, of the more conservative, antiwelfare-state liberals. It is true, as Ruggie indicates, that the international documents are a compromise, not the expression of any one "hegemon's" values, and also, as he puts it, that "different clusters of rights enjoy differential normative status in the international community." Nevertheless, as a whole, these documents are a kind of war machine for a slightly left-of-center liberalism. And this brings us back to our predicament: In a decentralized and cacophonic world society, how can one expect antiliberal regimes to yield to such a vision and to allow the entry of Trojan horses?—for the history of human rights shows that granting some of these rights always leads to demands for more, to that very questioning of existing laws and practices, to that very search for new forms and meanings of self-mastery and self-fulfillment, that is both the glory and occasionally the doom of liberal polities.

There is a fundamental ambiguity about the international normative order of human rights. On the one hand, it pretends to represent a consensus, to offer a kind of common floor on which very different regimes can stand—both because conceptual trade-offs and verbal agreements made these documents possible, and because the only chance this order has of becoming more than a display of collective hypocrisy is the establishment of some kind of common denominator, some form of "peaceful coexistence" and minimal convergence of all the ideologies in competition. On the other hand, it is also, however much concealed, the ram of one particular ideological faction against all others. Being both an offer of an armistice and a tool of warfare—the continuation of ideological competition by other, potentially more dangerous means (action at the international level)—the politics of human rights ends up suffering from both the clash of *arrière-pensées* behind the (verbal) armistice, and from the heightened resistance this new form of warfare cannot help but provoke.

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THE IMPERATIVES

Despite all these obstacles, I consider it imperative for the United States and other democracies to take the international dimension of human rights seriously and to make the promotion of these rights a major goal of their foreign policies. This is so for two sets of reasons—the very same kinds of reasons that made up the political predicament.

In the first place, it is a moral imperative. To be sure, this argument will not convince those who believe that the only command a state must heed is its national interest, or that its lodestar should be prudence and expediency. But, as has often been argued, there are different ways of conceiving the national interest, and it is only when international relations are a hell of inexpiable hatreds and life-and-death situations, when physical survival is immediately at stake, that a case can be made for eliminating moral consideration *extra muros*. When the system is less like a jungle, and indeed when there are different ways of ensuring survival, chances for a not purely Machiavellian ethics exist. What is prudent or expedient is itself partly determined by what the statesman considers right.

Why is it right to act for the promotion of human rights abroad? It is not only, or primarily, because the American public requires idealism. The publics of many democracies do not expect their governments to fight for causes other than the purely national ones—that is, they seem to accept the distinction between (to use Kantian terms) moral politics at home and amoral politics abroad. As for American idealism, it has often found itself satisfied with what Kant would have called political moralism, concealing purely selfish objectives behind moral rationalizations. It is because the values of the international normative order of human rights—the moral and political ideology of human rights, if you prefer—are the values and ideology of liberal democracies and have an inherently universal thrust, whatever the philosophical basis for endorsing these values (a philosophy of rights or "rule utilitarianism") may be. If statesmen believe in these values, and even if they also believe that the diversity of situations, dogmas, and cultural traditions does not allow for their successful promotion everywhere at once, they would be both timid and inconsistent if they did not try to promote this ideal (unless they accept the counterarguments that I shall try to refute later). Deciding to pro-

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mote it does not tell us what the best tools are, how far it is wise to prod other regimes into reform, whether discretion or publicity are the best approaches, and so on. Here, we are in the domain of practice and skill, of balancing and trade-offs. But such a decision means rejecting relativism and neutrality; relativism, because if one believes that—to quote from Tom Farer—"the value of liberty defined as control over one's life" is a value worth living and dying for, one should not hesitate to try to make it prevail—peacefully—over inferior values; neutrality, because other moral-ideological codes are most unlikely to show comparable restraint, and also because the form that the international rhetorical consensus of clashing value systems has happened to take is that of the liberal credo. This is an invitation to press those who have chosen to salute it, for whatever reason, to adjust their conduct to their words.

For reasons of necessity, of prudence, and of philosophy, a Liberal (or a liberal polity) must take as a starting point the coexistence and free contest of different value systems; tolerance, respect for diversity, and resignation to dissent are basic liberal values. But the version of liberalism that reduces it to an open flea market, where all merchants come and peddle wares of equivalent worth, is unacceptable. The values I have just described define the nature of the contest; they do not rule out an attempt at propagating one's faith and at consolidating the rights that embody the liberal creed. My plea is against the brand of liberalism (so powerful in the nineteenth century) that was unreservedly anti-interventionist abroad—for instance, for the anti-paternalistic reasons given by John Stuart Mill. Wholesale noninterventionism abandons the victims of illiberal regimes to their masters. Is this, then, a plea for intervention? Yes, within very strict limits: the purpose and *effects* must be to increase the autonomy of such victims (many American interventions abroad, despite fine intentions, have actually deprived those whom we wanted to help of responsibility for their fate), with the means carefully tailored to these ends. Existing legal mechanisms must therefore be used as fully as possible, and in order to guard against the temptation of self-serving action or selfish benevolence, the policy should be carried out by a "front" of several countries.

One powerful moral reason for such a policy is that it would aim not only at spreading the benefits of liberal democracies, but also at overcoming the antinomy between what has been called "the moral-

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ity of states" (based on the principle of state autonomy[12] and on the mutual recognition of a range of states' rights) and a cosmopolitan morality that subordinates these rights to the human rights of individuals and groups. Staying strictly within the former means either denying the primacy of human rights or subordinating their protection to the consent of states, even when those states are repressive shells within which there is no "fit" between the government and the people, no recognition either of the principle of self-determination or of the ideal of self-government. The present international order has actually gone beyond this morality, insofar as it grants legitimacy only to states that respect the principle of *self-determination.* But despite the legal network of human rights treaties and declarations, states behave as if the disregard of the ideal of *self-government* were no bar to the legitimacy of regimes, no ground for external action on its behalf. A consistent liberal world order would erect both values as criteria of governmental legitimacy; in this way, the conflict between states' rights and human rights would be resolved, and states (or rather their agents, the governments) would be recognized as entitled to a full panoply of rights only if they were at the service of their citizens' humans rights.

The second imperative for such a policy lies in the realm not of ethics, but of politics. It is in the long-run interest of liberal democracies to transform the nature of the "game" of international politics. In a world armed with nuclear weapons and marked by "complex interdependence," politics-as-usual, the clash of security calculations, and the manipulation of all by everyone guarantee physical destruction and economic chaos.[13] Development, social progress, a modicum of psychological, economic, and physical security, and a reduction of violence all require, not a "reinvention of politics" or the abolition of the sovereign state (for if this were the prerequisite, we might as well resign ourselves to our doom), but a reorientation of politics and a redefinition of the national interest—so that it incorporates more of the international interest as well—a pooling of sovereignties, and the spread and strengthening of international regimes. These provide the member states with benefits unilateral action cannot obtain; they give states a stake in preserving such procedures and institutions even if the momentary balance of gains and losses for a given member shows a deficit; they enforce mutual restraints. Such a transformist, or reformist, strategy clearly aims at narrowing the gap

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between the international normative order and the practice of world politics.

The promotion of an international human rights policy is an important part of such a strategy of change. On the one hand, at the global level, strengthening the machinery set up for the protection of these rights, while certainly not ensuring individual happiness and stability among states (promoting rights is inherently contentious), would at least help remove some of the most basic causes of violence in world society; it would enlarge the sphere of transparency and increase chances for redress. On the other hand, going back once more to Kantian wisdom, we have good reasons to believe that the global preconditions for individual self-fulfillment—peace and an effective international system of distributive justice—are most likely to exist when the main actors are states that respect human rights; such a strategy would tend precisely to protect the states that already do and to nudge the others in a similar direction. The political objective, distant as it may appear, would be the same as the moral one: a world in which the conditions of legitimacy of regimes would be both self-determination and the observance of the other human rights recognized by the international normative order. It would be a world in which what Ruggie finds still missing badly, a more integrated global society (more consensus) with a collective machinery of enforcement (more centralization), would emerge gradually.

The case that has often been made for international regimes in such realms as the oceans, trade, world finance, communications, nuclear proliferation, and so on, can be argued just as powerfully with respect to human rights, even though most of the former concern transnational flows that no single government can control (or where attempts at national control boomerang), whereas the field of human rights seems to consist mainly of national struggles between individuals or groups and their governments. But the massive violations that occur today are likely to provoke flows, or floods, of refugees seeking asylum abroad; the alternative to collective regulation is generalized misery or the backlash that inevitably results when certain countries, having opened their borders more than others, come to resent the selfishness of the latter and to experience domestic friction. Conversely, national attempts to regulate the flow of migrant workers are likely to result in violations of human rights, and if these rules are too restrictive, in violent explosions in countries whose sur-

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plus active population could no longer use "exit" instead of "voice." Without international norms and regimes, the conflict between "cosmopolitan" moral duties and a national government's primary responsibility for the welfare of its own citizens would become unmanageable.

Against this moral and political plea are aligned a number of counterarguments that can be divided into two groups: "You *should not* try," and "It *cannot* be done." The first group consists of a variety of positions, all of which amount to saying that while as human beings we should all be concerned with the fate of human rights anywhere, a foreign policy of human rights will only make things morally and politically worse. Three types of arguments can be distinguished.

The first one puts the greatest emphasis on the moral harm such a strategy could cause. It deplores it as a form of moral imperialism, as the arrogant attempt by one nation or group of nations to impose their peculiar values and practices on other cultures and on countries with different political experiences and traditions. What right does any one nation have to be righteous and to set itself up as a model? Isn't such pretension a form of cultural and political expansion? Doesn't it in fact violate the basic norms of the international milieu, since the principle of noninterference in the domestic affairs of states is designed precisely to protect each national group's right to have its own practices (however obnoxious they may appear to others) and to stop foreign governments from trying to reshape other states? Replying to critics who had accused him of ruling out as immoral external intervention by force to help victims of a tyrannical regime win their revolutionary attempt at achieving self-government, Michael Walzer wrote of a people's right to have its rights violated by its own state.[14] This point, often made by Reinhold Niebuhr, is reinforced by George Kennan's observation about another moral flaw, the arbitrary selectivity with which the concern "for other people's liberties" is usually expressed.[15]

A second argument presents a mixed case—partly moral, partly political: the strategy I have recommended would aggravate the predicament discussed above, and make both international relations and the condition of human rights abroad even more difficult. Doesn't, in practice, a diplomacy of human rights amount to political warfare, not on behalf of certain values, but against specific countries? Hasn't

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the cause of human rights been used as a weapon in America's cold war against the Soviet Union (or Cuba or, today, Nicaragua)? What about the anti-Zionist resolution pushed by Arab states and their patrons in the General Assembly and other UN bodies? Violations of human rights abroad can become pretexts for cutting off foreign aid, and thus for hurting the poor in developing countries; that is, they can fuel a hypocritical desire to turn one's back on the outside world and provide a moralistic disguise for sheer selfishness. Thus the universalistic language of human rights, this alleged common discourse or conversation shared by all ideological systems, would actually be abused for particularistic and harmful purposes.

The third argument is the most heavily political. Paradoxically, it derives from a kind of moral Manichaeism. It suggests that not all states that appear to violate human rights (or actually do so) should be put in the same basket: there are, so to speak, good violations (or tolerable ones) and bad ones. Two such cases have been made; they are mutually exclusive in their effects, despite a similar structure of arguments. One is derived from Marxism; it asserts that the array of civil and political rights cannot be provided by a government unless the basic economic and social needs of the population, and the possibility of economic development, are provided first. Since these conditions cannot be met in poor countries under the capitalist system, as the theorists of *dependencia* argue, the only true violator of human rights is capitalism.

The other case is derived from a certain interpretation of liberalism. It proclaims the primacy of the "negative" rights of the individual, that is, of civil and political rights, and focuses on the antagonistic relation between society (whose autonomy is seen as a major value, and which is conceived as a sum of individuals) and the state (whose powers are to be curtailed). In this scheme, there is one categorical villain: totalitarian regimes, which deny these rights, destroy all limits to state power, and throttle society. To be sure, authoritarian regimes restrict political rights also, but they do not remove all restraints on governmental power. They may try to control political institutions and limit the flow of ideas, but they allow for (nonpolitical) independent organizations in society, do not try to absorb all social institutions into the state, and often, as Jeane Kirkpatrick has argued, "leave in place . . . habitual rhythms of work and leisure, . . . habitual patterns of family and personal relations."[16] She recog-

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nizes that they also leave in place "existing allocations of wealth, power, status [that] maintain masses in poverty." Remember, however, that economic and social rights other than the right to free enterprise and property are not, in this conception, recognized as "real" rights. A Kissinger variant is that authoritarian regimes are distorted versions of traditional regimes, which observe customary restraints, but totalitarian ones are perversions of absolute populist or nonliberal democracies, in which the people's will is supposed to be unconstrained by checks and balances, and unfiltered by representative government.[17]

All these arguments strike me as morally defective and politically unconvincing. The last one is doubly embarrassing, and for this reason, I will discuss it first. Morally, the suggestion that there are bad violations, and, if not good, at least tolerable ones, provides no consolation for the victims of the latter, and evaluates the ills they suffer, not according to the harm inflicted on them nor on the basis of the nature or importance of the rights violated, but on the basis of the essence or nature of the regime. Empirically, the case is extraordinarily weak. The Marxist variant assumes that economic development and social progress are best assured by certain restrictions on civil and political rights ("luxuries" that poor societies still riddled with injustice cannot afford) and by revolutionary violence. It postulates that such development and progress are more likely in leftist authoritarian (or totalitarian) regimes than in liberal democratic ones. The record is far more murky, as the essays by Farer and Weinstein indicate. Leftist regimes that limit civil and political rights have a better record in social issues, particularly in the redistribution of income, in Latin America and in Africa. If we define rights as control over one's life, we must remember that even in the realm of economic and social affairs, this progress consists of services provided, not of rights granted. Moreover, the economic record of progress is far less impressive than that of social change: many of the economies of Marxist countries have stagnated or reached levels of growth below those of comparable capitalist or partly socialized economies, and there is considerable evidence of waste, a lack of incentives or innovation, and a stifling price of bureaucratic regulation. Finally, as Weinstein shows, violations of civil and political rights are damaging for economic development—many resources are spent on repression,

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and many talents squashed by it—and also for social justice, because of corruption and favoritism at the top.

As for the famous distinction between totalitarian and authoritarian governments, it rests, as has often been pointed out, on a confusion between the world of ideal-types—which provide criteria for identifying, "placing," and comparing existing regimes—and the world of political realities. As a result, it tends to ascribe to actual totalitarian governments attributes of the pure ideal-type, and to credit (or debit) them with a capacity of mass mobilization and an ability to control all sectors of society that far exceed their resources. Such a view distorts a reality that is often marked, not by idealistic zeal, but by cynicism and apathy, not by the politization of all groups and social institutions, but by intense privatization, the ultimate form of social and individual defense. Also, the distinction beautifies unduly many authoritarian regimes. Today, such regimes are often anything but "traditional"; they are either sophisticated modern versions of fascism, with its emphasis on controlling the corporate groups it pretends to resuscitate or to create; or they are systems of uncontrolled bureaucratic and technocratic rule. They are not satisfied with banning political parties (or creating fake ones) and limiting freedom of political expression, but insist on preventing society from organizing itself in a way that could challenge the arbitrary power of the state—hence the purging of unions and universities.

The distinction neglects the fact that not every authoritarian regime is easily replaceable by a liberal one. Such a change has happened only in places that had a pre-authoritarian democratic experience. Some authoritarian governments have been remarkably self-perpetuating, or, when shaken, succeeded only by another variety of authoritarianism. Conversely, some totalitarian regimes have been quite adept at undermining themselves: in Hungary, Czechoslovakia, and Poland, they have survived, not because of the formidable power of the state (which in Poland in 1982 had largely withered away), but because of the military—the Red Army and the Polish army; in Yugoslavia, "totalitarianism" has evolved into a rather original and complex brand of authoritarianism. From the essence or ideal-type of a system, one cannot derive valid conclusions about the possibilities of democratic conversion of real states.

Above all, the distinction ignores one point of crucial importance. Whatever the two ideal-types may tell us about the relations between

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the state and society, they (as well as the regimes that correspond to them) share what Montesquieu called a principle, which he defined as the government's spring, "what makes it act," whereas its nature is "what makes it so." Nature is structure; principle is the set of "human passions that makes it move."[18] The principle of all despotic governments is fear; neither honor nor virtue constitute adequate barriers to its power. This matters particularly for the subjects of human rights: individuals and social groups. Montesquieu understood that politics is a matter of psychology (shaping and shaped by laws and institutions): the fundamental differences between regimes are the differences in psychological springs, in the passions that governments manipulate, in the character of the subjects thus molded.[19] Fear can be a complex and subtle tool, one that a despotic government can manipulate and modulate according to circumstances. Mass terror is the most spectacular and scary example, and we have all been darkly fascinated by what we have learned about death camps and Gulags. But fear can operate more quietly without losing its effectiveness: the notion of the economy of force applies also to terror. Several disappearances, some executions, strategic purges, a sudden display of arbitrariness, can have the same cowing effect and succeed just as well in "beating down anyone's courage." If we consider human rights, as I suggested, as political rights, the distinction between the two types of illiberal regimes vanishes.

Both the dichotomy derived from Marxism and that of the neoconservatives, derived from C.J. Friedrich and Hannah Arendt, tell us: Do not try to pursue a policy that aims at defending human rights everywhere, because the primary moral and political duty of a leader is to win in the struggle of "us" (the forces of good) against "them." The contest between rival powers is, of course, a reality that the "moral politician" described by Kant must take into account. But it cannot be morally determining: it is a constraint, not an ethical imperative; and it should not be disguised as virtuous if it leads, for instance, the champions of the good to ally themselves with perpetrators of evil who happen to be on their side against the common enemy. If our government has to do so (which is questionable), we might as well recognize candidly that we are forced into it by the contest and led to it by the pro-American sympathies of these dubious allies, rather than pretend that they deserve our protection because the failings of the adversary are so much worse.

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The second counterargument, about the bad effects of a serious concern for human rights on international relations, is based on some good evidence. In a world of competing interests and self-help, the risk of contributing to the "state of war" without helping the cause of human rights at all is real (the Jackson-Vanik Amendment did nothing for Jewish emigration from the Soviet Union; Carter's public concern for prominent Soviet dissidents served neither their cause nor that of arms control). Collective sanctions against South Africa's apartheid policy might well render hopeless the situation of those South African politicians and elites who understand the need for gradual evolution. But this counterargument should be taken only as a warning against a human rights policy that would ignore the criterion of effectiveness, sacrifice it to spectacle, or be motivated by considerations of political warfare. The case of Timerman, that of many other prisoners liberated under American pressure during the Carter years, and that of the elections of 1978 in the Dominican Republic show that a policy can be effective without aggravating international relations. What the counterargument suggests is prudence and skill in means, and vigilance against a slide in ends; it should not lead us to give up trying to reach just ends.

As for the first, the condemnation of moral imperialism, again the risk exists; but abandoning the attempt because nobody is good enough to try, or capable of giving, in Kennan's words, a "very fair and principled devotion to the cause" consistently, evenly, and universally, is an argument of despair. It would amount to avoiding moral imperialism by moral cowardice. Let us generalize it; there are, some people tell us, "macho" cultures in which rape is tolerated, where women who are raped are presumed to have "asked for it." Why should I impose my condemnation of rape—a violation of the victim's right to physical integrity—on such a culture? And since I clearly cannot pursue a Quixotic attempt at getting rapists caught and punished everywhere, why should I get so indignant about a crime that happens to have occurred within my reach? In other words, despite the noble concern that this argument shows for humility, and for the distinctive features of other societies, it can all too easily become an alibi for bad governments and for abandoning the victims. The argument about specific mores and institutions that are incompatible with American or Western liberal expectations is all too often used as a shield behind which harm safely continues to be in-

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flicted on the innocent and even the most basic human rights are trampled. Once again, we need to be cautioned against both ignoring those particularities of customs and rituals whose character and pervasiveness may prevent the achievement of the full range of human rights recognized in the international normative order, and against imposing our own structures and strictures on polities that they don't fit. But the realities that these legal norms aim at creating happen to meet the aspirations and needs of most individuals and groups—except when they have been repressed so long that they don't even realize that chances for self-fulfillment exist. It is usually governments and their defenders that argue about the obstacles, even though they signed these documents or even acknowledged these aspirations in their constitutions. Whether a human rights policy is morally imperialist or not is a matter of practice; it is not of the essence.

Thus, none of the "thou shall not" exhortations is fully convincing. But Kant also taught that there is no moral duty to pursue the impossible. We must therefore turn to the second set of admonitions: Don't try, because it can't be done. Again, we find three principal arguments. The first concerns the information on which a human rights policy must be based: it is impossible, we are told, to know exactly what goes on abroad, because some countries are very good at concealing mischief (we still don't know what happened, for example, some years ago in Sverdlovsk). Even when we know the facts (such as massacres in a Central American country), we can't always find out who committed the crime or under what circumstances. Even when this can be figured out, we have to try to make sense of the whole context, which is very difficult to grasp from the outside, and often fiercely controversial.

A second argument deals with the perennial issue of consistency. The inevitable trade-offs will make a coherent policy impossible. We must, after all (or before anything else) protect our strategic interests: the "relation of major tension" cannot be ignored, and we have to avoid weakening our allies, however deplorable some of them may be, in order not to strengthen our adversary or throw our disgruntled clients into his arms. We must also protect other legitimate "world order" concerns—the international normative order does not consist of human rights alone. For instance, in the realm of force, we have a

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major political and moral interest in slowing down nuclear proliferation; diverting a country from becoming a nuclear power often involves providing it with guarantees, or tightening links between it and our own: this could be incompatible with an assault on its human rights violations. Last but not least, our own moral sense, our long-term political and economic interests, the pressures from developing countries, and recommendations of groups like the Brandt Commission argue for our helping these nations to meet the basic human needs of their people—even by providing assistance to governments that trample the civil and political rights of their subjects as they try to raise the level of wealth and improve social conditions.

The third argument goes back to the political predicament I dealt with earlier. Improving human rights abroad means persuading and forcing a foreign government to change its ways. This cannot be achieved without massive intervention: armed, perhaps, when we try to stop genocide (cf. the Indian move into Bangladesh, the Tanzanian against Idi Amin), or more peaceful yet highly intrusive—for instance, if we attached to our economic and military assistance to El Salvador strict conditions about the behavior of the army and paramilitary groups there. Now, such intrusions, in addition to being potentially catastrophic for world peace (they could lead to local bloodshed and to counterinterventions), are most unlikely to reach their goal. If they are brief or scattered, their effects will vanish; lasting improvements will require lasting involvement; and this is most unlikely to be acceptable at home, in addition to creating deep resentments abroad. For there is a fundamental contradiction between trying to increase the dose of "control over one's life" in a foreign country and, so to speak, taking it over.

These points are not fully convincing either. To be sure, information is often spotty or imperfect. But there are, by now, so many ways, public or private, of obtaining a good overall picture and of finding out not only about specifics, but about trends (often a more important consideration), that it is, in fact, more a feat to ignore what crimes and inequities are being committed than to know. As for the second and third arguments, they are perfectionist: they suggest that only total consistency or complete effectiveness would be acceptable, a demand rarely presented in the more usual realms of foreign policy. It is obvious that in the real world, the complex calculation of trade-offs will make perfect consistency impossible. But so long as

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the concern for human rights does not disappear, so long as the need to protect other interests does not result in the elimination of our effort, a certain degree of unevenness is perfectly acceptable. Indeed, it may even be desirable.[20] For a crucial objective of a human rights policy must be effectiveness, and we cannot either be effective everywhere with the same methods or, whatever methods we use, be equally effective in the results we achieve all over the world. From the viewpoint of effectiveness, a case can be made for concentrating our efforts, not on adversaries who are largely beyond our reach, or on "friendly violators" too difficult to handle because our ties with them are too few (such as China), but on clients who are largely dependent on us, for whose governments, or for whose governments' actions, we cannot escape a big share of responsibility, and whose reform is both our moral duty and in our political interest. For the violations perpetrated by these governments are likely to undermine them, to weaken our own position, and to plunge us into the dreadful, familiar dilemma of either trying to save them by giving them whatever assistance they need (on their own terms, since it is, by then, too late for reform) or else risking a double disaster: the collapse of our own power position, and the coming to power of forces that will be both hostile to us and, from the viewpoint of human rights, not necessarily any better than our suicidal client.

Changing regimes from the outside is obviously difficult. But it is not a matter of all or nothing. It is a matter of using and expanding the leverage one has in order to obtain significant results without becoming trapped in self-defeating intrusions. What this requires, as I have argued elsewhere, is a triple strategy. First, we ought to aim at achieving a common floor (i.e., require of all states the respect of the most basic human rights, those of physical integrity—freedom from torture and arbitrary deprivation of life as well as from famine and disease) and a movable ceiling (since the range of what can be expected will vary from place to place). Second, the policy must entail acts both by governments and by international institutions, including international financial ones. Human rights considerations are perhaps "political," but there are many other political considerations these institutions, sometimes clandestinely, take routinely into account. Moreover, economic or financial measures are only means to goals; the promotion of human rights ought to be one of the goals sought, in accordance with the dictates of various international legal docu-

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ments. The policy must also entail acts both by public bodies and by private individuals and organizations. A public policy that tries to use available leverage against a violator can be defeated by bankers, traders, and investors who keep pouring far more money into the country in question than the government that takes human rights seriously ever gave or lent to it. What is needed here is both a greater "cosmopolitan" moral sense among private, especially corporate, groups and the use, on behalf of a human rights policy, of the kind of legislation that curtails business activities with adversaries and that even many champions of free enterprise, or of the notion that profitability should be the only business of business, find quite tolerable on behalf of national security. Third, it must be a multinational policy, to guard against the diversions or temptations of one nation's moral imperialism and to increase the chances of effectiveness.

Samuel Huntington has suggested that democratic governments have spread abroad when America has been powerful, and receded when its power declined.[21] Quite apart from the fact that he focuses only on civil and political rights, he ignores all the cases in which American power has been used to strengthen or to preserve regimes whose attitudes toward human rights were anything but compatible with democratic values. The promotion of human rights abroad is not synonymous with "the expansion of American power." Neither the pluralism of our institutions nor our own liberal-democratic values have guaranteed us against the misuse or corruption of American power abroad. These institutions have functioned either badly or too late, and our leaders have either confused the expansion of our power with that of our ideals or tacitly put aside the latter to ensure the former. What the promotion of human rights abroad requires is a coalition of liberal-democratic states willing to heed, in their foreign policy, the dictates of their values, and to recognize the congruence between these values and their long-term interest in a transformed international system composed of states that respect human rights.

ENDNOTES

[1]I discuss this at length in *Duties Beyond Borders* (Syracuse, N.Y.: Syracuse University Press, 1981).

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[2]"The Challenge of Peace: God's Promise and Our Response," *Origins* 13 (1) NC Documentary Service, May 19, 1983).
[3]Peter Meyer, in *The International Bill of Human Rights,* edited by Paul Williams (Entwhistle Books, 1981), p. xli.
[4]*The Peloponnesian War* (New York: Modern Library, 1934), p. 189.
[5]On this point, see my essay, "International Law and the Control of Force," in *The Relevance of International Law,* edited by K. Deutsch and S. Hoffmann (New York: Anchor, 1971), pp. 34-66.
[6]*Human Rights and Basic Needs in the Americas,* edited by Margaret E. Graham (Washington, D.C.: Georgetown University Press, 1982), p. 316.
[7]Quoted in Meyer, *The International Bill of Human Rights,* p. xxxi.
[8]*The Philosophy of Kant,* edited by C.J. Friedrich (New York: Modern Library, 1949), pp. 122, 123, 124, 438.
[9]Ibid., pp. 126-27, 120, 127.
[10]"Kant, Liberal Legacies, and Foreign Affairs," in *Philosophy and Public Affairs,* June 1983 and forthcoming in October 1983.
[11]*L'invention démocratique* (Paris: Fayard, 1981), pp. 50ff.
[12]Cf. Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), pp. 63ff.
[13]See *Primacy of World Order* (New York: McGraw-Hill, 1978).
[14]"The Moral Standing of States," *Philosophy and Public Affairs,* Spring 1980, p. 226.
[15]*The Cloud of Danger* (New York: Atlantic, 1982), p. 44.
[16]"Dictatorship and Double Standards," *Commentary,* November 1979.
[17]*Years of Upheaval* (Little, Brown, 1982), pp. 312-13.
[18]*The Spirit of the Laws,* part 1, book 3, chapter 1.
[19]See Judith Shklar's forthcoming book, *Vices* (Harvard University Press).
[20]See Alan Tonelson, "Human Rights: The Bias We Need," *Foreign Policy,* no. 4, (Winter 1982-83): 52-74.
[21]*American Politics: The Promise of Disharmony* (Harvard University Press, 1981), pp. 246-59.

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Gaston V. Rimlinger

Capitalism and Human Rights

DURING THE DECADES FOLLOWING WORLD WAR II, the industrialized democracies of Western Europe and North America committed themselves to ever-rising levels of social expenditures. The sustained, unprecedented growth in economic well-being of this period made possible the expansion of individual and family income-security programs and a wide variety of government-financed human services. Continued growth of these payments and services was predicated on the continuation of high rates of economic growth and employment, as well as reasonably stable prices and demographic patterns. In other words, the payments, services, and entitlements that have become the hallmarks of the welfare state could keep growing only so long as the supporting economies were growing at a sufficiently rapid rate in real terms. When the economies of the Western democracies began to falter and inflation accelerated during the early 1970s, the welfare state was headed for a major crisis.

This essay relates to the crisis of the welfare state to the extent that this crisis is a dramatic manifestation of one of the dilemmas of human rights inherent in capitalism under mass democracies. It is a dilemma that derives from a conflict in human rights which is deeply embedded in the history of capitalism and modern mass democracy, the conflict between private property rights and social rights.

In spite of the conflict, both kinds of rights have contributed in major ways to the historic success of capitalism as an economic system and as a civilization. Private property rights protect the freedom of the individual to dispose of his property and his labor. Property

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rights are part of the civil rights that are essential to individual freedom, and in the form of the freedom of contract, they constitute the governing principle of a free market economy. Social rights, on the other hand, entitle the individual to some share of the social product based on membership in the community rather than on property or labor.[1] To be a genuine social right, however, such an entitlement has to be effectively protected by custom or statute and be subject to due process. It cannot be a gift bestowed upon the individual by a benevolent or calculating dictatorial power that may cancel or alter the entitlement any time it suits its purpose. Social rights may be guaranteed by the strength of tradition, but in a modern setting, they normally presuppose mass democratic forces, though not necessarily democratic institutions.

In a capitalist economy, social rights represent an inevitable curtailment of property rights and, by logical extension, of individual freedom. This has always been the message of classical liberalism. Classical economists since Adam Smith have argued that, in addition to reducing individual freedom, infringements of property rights tend to reduce economic effort, initiative, efficiency, willingness to take risks, and, ultimately, national prosperity. This is the central message of Milton Friedman's *Capitalism and Freedom*[2] and of the other critics of the welfare state.

This essay will not dispose of the unresolved philosophical and economic issues related to the conflict between property and social rights. Its aim, rather, is to trace the historical development of this conflict over the last one hundred years in the major Western capitalist countries and to define its current status. Modern social rights, as T.H. Marshall has pointed out, are mainly a twentieth century phenomenon, but their beginning on a significant scale occurred in the last two decades of the nineteenth century. The core of modern social rights has always been represented by the income protection and services that constitute the social security system. In the broad sense in which I intend to use social security, it includes the statutory employment-related benefits of old age, disability, unemployment, and health insurance, as well as family allowances and public assistance. Social rights, however, include also free public education, public housing, publicly financed retraining and rehabilitation, as well as minimum wages and income-oriented production subsidies. To keep the discussion within manageable bounds, this essay concerns itself

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mainly with the conflict of human rights as illustrated by the development of social security systems.

To put this discussion in a historical perspective, it may be well to explore briefly how the conflict between property and social rights arose in the first place. The emergence of capitalism out of feudalism involved a large-scale transformation of human rights. Feudalism had severely limited private property rights, but, at least ideally, it did represent a system of social rights offering various forms of economic protection, whether through the paternalistic duties of feudal lords or the fraternal arrangements of guilds. Capitalism advanced through the development of markets, which interacted with the concurrent strengthening of private property rights and the related growth in individual freedom. Stronger property rights and expanding individual freedom were major driving forces in the rise of capitalism from the sixteenth to the nineteenth centuries.[3] But with the strengthening of property rights and the rising dominance of unregulated market forces as a determinant of incomes, there was an inevitable weakening of social rights in the form of income guarantees that had been part of the feudal arrangement. "Social rights," Marshall wrote, "sank to the vanishing point in the eighteenth and early nineteenth centuries."[4] The historical novelty of a society dominated by self-regulating markets was stressed in Polanyi's *Great Transformation.* In his view, such a situation is inherently unstable: "To allow the market mechanism to be sole director of the fate of human beings and their natural environment, indeed, even of the amount and use of purchasing power, would result in the demolition of society." The natural reaction of society, he argued, is to seek protection against the insecurity and uncertainty of the laissez-faire market system.[5]

It would take us too far afield to examine Polanyi's arguments in depth. Let us note only that if the dominance of the market stripped away the traditional protective covering, there were additional forces at work creating insecurity, as well as new attitudes toward insecurity and protection. The structural transformation called industrialization was a fundamental cause of insecurity in that it shifted production from the self-employed household to wage employment in the factory or shop. The extended household was a production unit with its own internal distribution and mutual protection arrangement. The nuclear family—wage-dependent, geographically mobile, and urbanized—could not provide the same protection, especially for its

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older or disabled members who could not be fitted into the industrial production process. Yet, even if the old protective covering had not been stripped away, its paternalistic and deferential forms would no longer have been acceptable. The rise of capitalism not only led to a broadening of civil rights, but brought with it also political rights—the "right to participate in the exercise of political power."[6] As John Stuart Mill noted, the industrial working classes were no longer willing to accept the idea of being led by the hand by the ruling classes; they were going to take the protection of their welfare into their own hands.[7] It was not merely gains in political rights that encouraged workers to press for the reestablishment of social rights. Their power was enhanced also by the very nature of large-scale and complex production processes. This kind of production cannot rely on personal relations to assume compliance with the goals of the firm; it depends for its success on cooperative, alert, and healthy workers, not workers who are antagonistic because of harsh inequalities or debilitated by insecurity and low pay.

I have outlined briefly some of the broad forces that were behind the emergence of social rights in the late nineteenth century. In the remainder of the essay, I want to trace the evolution of social rights in three historical periods. The first period, from the 1880s until World War I, deals with the emergence of social rights related to income security. It is the period during which the conflict of rights at the level of principle was most important. During the second period, between the world wars, there was growing acceptance and diffusion of social rights, but also a realignment of forces as well as the first manifestations of acute human rights conflict between property and social rights. The third period, after World War II, witnessed first a broad reaffirmation and universalization of the idea of social rights, then an important reinterpretation and expansion during the 1950s and 1960s, which led to the crisis of the 1970s and 1980s.

THE EMERGENCE OF SOCIAL RIGHTS BEFORE WORLD WAR I

It is no coincidence that the social rights with which we are concerned here were first introduced on a significant scale in Imperial Germany. During the 1880s, Germany was the first country to introduce compulsory schemes on a national scale to protect the income

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of individual workers in the case of sickness (1883), industrial accidents (1884), and old age or disability (1889). Although the taxes required by these measures represented a significant invasion of property rights, as well as a restriction of the employers' freedom of contract and of the workers' freedom to dispose of their income, these aspects were not a major issue in the debate over the world's first social insurance schemes. The reason for the apparent lack of a major human rights conflict was the weakness of classical liberalism in Germany and the survival of the tradition of social protection. Individual freedom in Germany had never been so closely identified with free markets as it was in England, France, and the United States. Germany had much more recently abolished feudal institutions protecting the worker, and in some industries, traditional mutual aid societies, like the *Knappschaften* in mining, were simply adapted to modern conditions.

The emergence of social rights in Germany occurred in a political and intellectual environment in which protection of the individual's economic welfare was considered a primary obligation of the state. This does not mean that Bismarck's actions were not politically motivated. His political aim, as is well known, was to undermine the appeal of revolutionary socialism among the working class. He saw the workers' loyalty to the state as the counterpart to the state's protection of the worker. While he was pressing for the expansion of the workers' social rights, he did not hesitate to curtail their civil rights through antisocialist legislation and to limit their political rights under an unequal voting system. Social rights, to some extent, were a substitute for greater civil and political rights. What counted most for Bismarck, in fact, was neither the social nor the civil or political rights of individuals, but the welfare of the state. The protection of individuals unable to earn a living was described in the Kaiser's 1881 message to the *Reichstag* as "one of the highest obligation[s] of every community."[8] Bismarck, who had drafted the message, no doubt shared this view, but the motivating force behind the protection of the worker was still the need to protect the state.[9]

The leading thinkers on social issues in Germany at the time were members of the historical school of economics led by Gustav Schmoller. They rejected the individualism and the free market solutions of classical economics. For Schmoller, who believed that only social systems dedicated to the common good could survive, the issue

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of social justice was paramount. To achieve social justice, strong rulers and a strong state were required.[10] To be sure, there were defenders of classical liberalism in Germany. The most prominent of them was the economist Lujo Brentano, who strongly opposed compulsory state insurance in favor of voluntary mutual benefit societies along British lines. In industry, the voluntary approach was advocated primarily by insurance companies and small employers, who had a natural vested interest but limited influence. Leaders of the more influential coal and steel industry, on the other hand, were among the earliest and strongest supporters of Bismarck's social policy. For them, mandated income protection for workers was simply an extension on a national scale of programs they had adopted in their own enterprises. Their paternalistic programs were a natural counterpart to the obedience and loyalty they expected from the workers.[11]

The main opposition to Bismarck's program was not motivated by a concern over property rights, but by a concern over his objective of increased social and political control. There is no evidence that German workers objected to compulsory insurance as such, apart from the small "liberal" trade union wing. For industrial workers, social insurance was likely to be much less restrictive of individual freedom than private company plans. But the bulk of the labor movement, which was Marxist-oriented, rejected Bismarck's social insurance policy. The Socialists denounced social insurance as a mere palliative, which only exacerbated the social injustices of capitalism in the long run. For them, genuine social rights were not conceivable without revolutionary emancipation of the working class, which was presumably hindered by Bismarck's policies. Thus, neither the "liberal" nor the socialist trade unions saw the emergence of social insurance as the dawn of new social rights, even though pressure from below had forced the state to act on their behalf.

We now turn to England, the home of classical liberalism and individualism. How did England turn from laissez faire to mandated protection by the state? There was, of course, the tradition of Tory paternalism in England, but it never played the important role that the tradition of the patriarchal state did in Germany. In England, as Dicey argued almost one hundred years ago, it was the same utilitarian doctrine which buttressed individualism in the early part of the nineteenth century that became the philosophical basis of social protection at the end of the century.[12] Under the conditions of the early

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nineteenth century, while England was still freeing itself from mercantilist survivals and the dominance of the landed aristocracy, Benthamite utilitarianism—the greatest happiness for the greatest number—lent itself to a rousing defense of laissez faire and broadened political rights. The individual was considered to be the best judge of his own happiness. By the end of the century, the faith in laissez faire was seriously shaken from within and from without the country. Social investigations revealed appalling widespread poverty in the country after decades of rapid economic growth. Internationally, England was being surpassed economically by other powers and was beset with doubts about its economic vitality and ability to sustain a worldwide empire. There was a growing realization that large numbers of people were running the risk of abject poverty because of illness, old age, and unemployment, in spite of personal and voluntary mutual assistance efforts. Existing policy relegated these people to the mercy of the hated poor law. This failure of the system to provide a tolerable level of economic security generated among men of intellect and property what Beatrice Webb called a "collective consciousness of sin."[13]

This change in attitude among the ruling classes toward "underserved" poverty no doubt helped pave the way for an expansion of social rights, as did the rumblings from below and the blandishments of socialism. But a major intellectual thrust toward the curtailment of property rights came from the campaign for national efficiency, the quest for which "gave social reform the status of a respectable political question."[14] It was respectable because it smacked of neither socialist egalitarianism nor of Tory paternalism. It aimed at preserving capitalism and the empire by improving the country's competitiveness, which was harmed by a debilitated and insecure industrial working class. The Fabians agreed with this diagnosis. Sidney Webb argued that a national minimum standard of life was essential to national efficiency and imperial strength.[15] Intellectually, the strength of the national efficiency argument derives from the fact that it aims directly at one of the fundamental justifications of property rights, namely efficiency. It made an economic externality case for intervention that even the staunchest defender of the free market could accept. The argument of the national efficiency campaign, it should be noted, was not that capitalism had created innocent victims who deserved to be compensated, but that unless these victims *were* com-

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pensated, that is, had their health and vigor restored, the competitiveness of the nation and the very survival of the empire would be threatened. There were, of course, inevitable comparisons with Germany, where rapidly rising economic and military strength went hand-in-hand with the most advanced social policy in the world.

Between 1897 and 1911, the welfare state emerged in Britain through a series of laws providing protection in cases of industrial injuries, old age, sickness, and unemployment, as well as meals at school and medical inspection of schoolchildren. The emergence of these social rights and the implicit curtailment of property rights, which liberals like Dicey condemned, were thus directly related to perceived long-run threats to the economic system and the political stature of the country. In this sense, Polanyi's thesis, that social legislation is a response to the need of societies to protect themselves, is valid for both Britain and Germany. The specific nature of the threat, as we have seen, was different in the two countries. There was pressure from below in both cases, but this was less important in Britain than in Germany. In Britain, as Hay has concluded, "it is implausible, any longer, to assert that the social reform of the period from 1906 to 1914 was simply the inevitable result of working-class pressure through the ballot box, or by direct action of the threat of it."[16] In both countries, the working class demanded protection, but the workers' leaders objected to the social programs initiated by the state. The business community in both countries had mixed feelings, but was on the whole much more favorably inclined toward the social reforms enacted than organized labor.[17] The main driving force behind the legislation in both cases came from political executives, supported by higher civil servants; they were the people who responded to the threats to the system.[18]

I want to turn now briefly to the pre-World War I experience of France and the United States, two countries where the liberal opposition to modern social rights was particularly strong. No country probably debated the issues of property rights versus social rights longer and more passionately than France. The first workmen's compensation act passed in France, in 1898, had been under discussion since 1880, and the bill that eventually led to the pension act of 1910 was first introduced in 1890. Ironically, it was the social policies of Napoleon III that had suggested to Bismarck the use of welfare measures to capture the loyalty of the working classes, but state paternal-

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ism did not sit well with the French people. It has to be kept in mind that industrialization in France proceeded rather slowly, and small family firms, artisan shops, and small agricultural holdings remained typical before World War I. The country was characterized by the wide dispersion of small businesses and small landed properties, and was not yet fully committed to large-scale industrialism. In this context, the classic method of securing individual and family economic security through personal saving and the acquisition of property was still perceived as a viable and preferable alternative. Liberal French lawmakers argued passionately against every kind of compulsory social insurance. They stressed that it deprived the worker of the liberty to dispose of his income, and in so doing, denied him the possibility of securing his economic independence. French workers, they argued, aim to acquire land or a house if they live in the country, or a small shop or store if they live in the city. This birthright of every Frenchman to become a property owner was threatened by compulsory insurance. Compulsory pensions at best provided some income, but that was far inferior to property, which the worker could bequeath to his children.[19]

The liberals were not alone in objecting to the limited social rights introduced in prewar France. Although there was pressure from below, from those who were the victims of the insecurity of industrialism, the poverty of the working class did not seem to create the sense of social guilt in France that it did in Victorian England. The French labor movement was much more radical than the German, but also much weaker. Ideologically, the revolutionary Syndicalists in France rejected cooperation with the bourgeois state, but practically, they were too weak to frighten the bourgeoisie into enacting social legislation to ward off revolutionary change. The spokesmen of organized labor insisted that society owed them free and comprehensive economic protection and therefore fought against the kind of contributory program the government was seeking to enact. After the 1910 pension law passed, the leaders of the *Conféderation Générale du Travail* did their best to undermine its application.

The attitude of French employers toward the emergence of social rights was rather ambiguous. For many of them, practical considerations were more important than the liberal arguments they were usually in sympathy with. In France, as in other industrial countries, large employers were often receptive to mandated social rights for

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the workers. Often they had themselves introduced such measures on a voluntary basis, partly out of paternalistic sentiment, but also because they saw potential benefits in terms of productivity and stability. Small enterprises, where personal relations were important, had less need for such measures, and often were less able to afford them. Moreover, large employers were used to dealing with the government bureaucracy, while small employers usually resented the official paperwork required by social programs.

In spite of widespread resistance and indifference from both the Right and the Left, there were promoters of social rights in France. Henri Hatzfeld called them *les Républicains de Progrès*.[20] They were mainly political executives, including both socialist and liberal parliamentarians and higher civil servants, whose overriding concern was the safeguarding of democratic (republican in the French sense) institutions. At the turn of the century, such institutions were by no means secure in France. If there was a rising threat from the Left, there were also historical precedents of assaults from the Right. What France needed in the view of these "Republican Progressives" was a greater sense of solidarity, a greater sense within each citizen that the values of the Great Revolution included not only individual liberty and security of property, but also security for the individual.[21] Solidarity rather than elimination of economic inequality became a reference mark of French thinking on social legislation. For those Republicans who were embattled with the Catholic church, it was also important that the state rather than the church stand out as the chief provider for the poor.

In the United States, the concept of income protection as a matter of social right made little headway before World War I. Only one kind of social insurance, workmen's compensation, was accepted, but the country established one of the largest veterans' pension programs of any industrial country. Isaac Rubinow, a former statistical expert at the U.S. Bureau of Labor, estimated in 1913 that "every second *native white* man over sixty-five was receiving a pension," and if the South was excluded, "nearly two-thirds of *native white* persons over sixty-five years of age [were] receiving a federal pension."[22] This was a rather peculiar response to the insecurity problems of industrialism, but it was an approach to social protection that was compatible with the American stress on individualism and laissez faire.

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In all industrial countries, workmen's compensation laws were the first legally mandated forms of income protection. The reasons for this pattern no doubt include the fact that it was generally easier, in the case of industrial injuries than in other instances of income loss, to dramatize the suffering of the victims and to justify their claim to compensation. In fact, the right to compensation already existed, but was usually highly restricted by prevailing interpretations of the freedom of contract. The main objective of workmen's compensation laws was to strengthen this right to compensation by eliminating the issue of who was to blame for the accident that caused the injury, and by establishing compensation funds and procedures. Thus, while workmen's compensation laws curtailed property rights, they did so in a more oblique fashion than other social insurance schemes.

In the United States, the workmen's compensation movement after the turn of the century was carried forward by the Progressive Movement, which attacked all kinds of social evils and called for reforms in the name of both social justice and national efficiency. Reformers like John R. Commons, who "was trying to save capitalism by making it good,"[23] had no difficulty in making a plausible case that predictable, compulsory compensation would stimulate preventive measures, improve the cost allocation of industrial risks, and thereby enhance industrial efficiency as well as the functioning of the free market. This line of reasoning was acceptable to the business community, which had other reasons to be dissatisfied with existing liability laws. The 1910 convention of the National Association of Manufacturers endorsed the workmen's compensation concept.

Beyond workmen's compensation, the major area where social income protection was established was pensions for war veterans and their dependents. This large-scale welfare program had a number of interesting aspects. Like so many other government handouts after the Civil War, it was a product of political patronage and intense competition for the soldier vote, which held the balance of power in many constituencies.[24] It is intriguing to ponder why the nation was prepared to be quite generous to those who had served in uniform, yet was willing to disregard the often much greater needs of other citizens; why, in other words, the patronage state was legitimate but not the welfare state. This question is too complex to be fully examined here, but a recent paper by Theda Skocpol and John Ikenberry throws some important light on this "patronage democracy" in

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terms of the country's political and administrative structure.[25] It should be noted also that veterans' pensions were legitimized in contractual terms. As D.C. McMurry noted some sixty years ago: "The idea that more and greater pensions were a contractual obligation, or at least that they were necessary to pay the 'debt of gratitude' due the soldiers, was so frequently expressed in Congress and by so many prominent public men, that it seems to have been the dominant theory upon which Congress acted."[26] It is irrelevant, therefore, that the bulk of the needy, the Negroes and the masses of foreign-born, were excluded; these pensions were not a social right of citizenship. On the other hand, there can be little doubt that the veterans' pensions were an important factor in the delayed development of social rights to income in America. Not only was a politically active segment of the population removed from exerting pressure for protection, but the veterans' pension alternative had financial attractions for industry, since veterans' pensions were financed from the general revenue, which depended on high tariffs that were favored by industry.

THE INTERWAR PERIOD

As we have seen, the fundamental breakthrough in social rights in the industrial countries occurred before the First World War, although the United States still remained largely unaffected. The developments during the interwar period were of a somewhat different character. There was a significant hardening and diffusion of the concept of social rights, but the same period witnessed also the first frontal attacks on established rights and the first large-scale curtailments of benefits. For the first time, the sustainable limits of social rights became the focal point of political confrontation. These limits were tested by the outbreak of the Great Depression, mainly in Great Britain and in Weimar Germany. But during the 1930s, new models of social rights emerged. One was the result of the breakthrough in social rights in the United States; the others emerged in Nazi Germany and Social Democratic Sweden.

The hardening of social rights after World War I was a consequence of the enhanced power of working-class political parties in the major European countries and of enlarged views about the economic responsibilities of the state resulting from the war. It will be recalled that before the war the labor movement was everywhere in

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opposition to compulsory and contributory programs of income protection. These programs were consequently shaped, so to speak, from above, without effective labor participation on the whole. The basic rationale for protecting the worker, not only in Germany, but also in Britain and France, was the need for greater social integration to protect the state and the prevailing economic system against actual or anticipated threats. With the emergence of labor as a major political power, the basis for the legitimacy of social protection shifted from the state to the workers. The idea gained prominence that income guarantees were a social right that had been won by the workers through years of struggle. The once-rejected social insurance programs now became the core of these social rights, along with liberalized public assistance, housing, and health services. It is no coincidence that in Germany, where Socialists took over as the empire collapsed, social rights were spelled out in the country's new constitution. If, in Germany, this new conception was imposed to a large extent by the political left, in England, all political parties accepted the notion that the government owed the working man either a job or an income. In France and in Scandinavia, just as in Germany, the Socialists were substituting the realization of social rights through the welfare state for their more revolutionary prewar objectives. The central issue of the interwar period thus was no longer to establish the principle of social protection. That was done before the war. The emerging issue now was to define the extent to which income could be guaranteed within the framework of predominantly market economies.

The importance of this issue is related both to the new driving forces and to the broadened objectives of social policy. The objectives of prewar social insurance were to assist the individual and the family in coping with the inability to earn an income because of old age, sickness, disability, or death of the breadwinner. These were sources of insecurity related to the structural change from the household to the factory as the dominant production unit. During the interwar period, protection against income loss because of unemployment became the major social policy issue. This additional form of protection during a period of considerable economic instability was bound to test the limits of the most advanced welfare states, namely Great Britain and Germany.

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Great Britain had actually introduced unemployment insurance in 1911, but it was then restricted to less than one fourth of the male labor force. At the end of the war, the government anticipated that demobilization would lead to a sharp rise in unemployment, and was much concerned with radicalized attitudes among the working classes. Under these circumstances, the initial temporary "out-of-work donation," introduced in 1918, created a compelling precedent for the nearly universal (excluding agriculture and domestic service) unemployment benefit program enacted rather hastily in 1920. Inadequate financing, repeated liberalization of benefit conditions, persistently high unemployment, and finally the Great Depression set the stage for a welfare policy crisis. Although the rapidly rising deficits of the British unemployment insurance scheme (over £75 million by March 1931) were not the cause of Britain's economic crisis in 1931, they had become the financial community's symbol of welfare extravagance and fiscal irresponsibility. To cope with the fiscal crisis, the country needed financial assistance from American banks, which would not provide it unless Parliament agreed on an austerity program. The Conservative opposition to the Labor Government in power took advantage of the situation to force major reductions in unemployment benefits. In this manner, England was forced to define boundaries on the postwar expansion of social rights.[27]

The political circumstances in Germany were different, but there, too, the Great Depression intensified a welfare policy crisis that was already in the making. The political strength of the workers during the Weimar era represented strong pressure for expansion of the welfare state initiated by Bismarck. However, from 1920 onward, the initially conciliatory attitude of industry and conservative elements changed to a posture of increasing resistance. This was especially the case with heavy industry, which still favored the principle of protection but grew increasingly alarmed over the curtailment of managerial prerogatives and the financial burdens imposed on capitalist enterprises. As in England, unemployment insurance became the focus of political confrontation. A program of unemployment benefits as a matter of right was not introduced in Germany until 1927, but by 1928 the program had already reached its financial capacity. Rapidly rising unemployment in 1929 created a need to borrow ever-larger amounts from the Treasury, which was itself facing a financial crisis.[28] After initial concessions on lower benefits and higher contribu-

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tions (paid partly by the workers), the Socialists refused to go along with further curtailment of benefits. Unemployment benefits were, after all, one of the main achievements of the Weimar Republic. The resulting political deadlock led to the dissolution of the *Reichstag* and to government by emergency decree. Not only unemployment, but all social insurance benefits, were then cut by emergency decree. Between 1930 and 1932, benefits dropped by one quarter.[29] It is widely agreed that the curtailment was larger than required by economic conditions; it was an expression of the political will of industrial leaders, who insisted on new boundaries to the welfare state. As in England, the deteriorated economic situation provided the occasion to carry out this objective.

If the onset of the Great Depression was a major test for the most developed social programs, it was also the occasion for the emergence of new models of social security. In the European context, the Swedish Democratic model was the most significant. Until the 1930s, the Swedish welfare system had lagged behind not only those of Germany and Britain, but also those of other Scandinavian countries. By the end of that decade, however, Sweden was in the forefront of the welfare states. The depression brought the Social Democrats to power in Sweden in an important political realignment that brought together workers and farmers. Part of their success rested on the fact that they were "the only party with a clearly mapped-out and operational policy" to deal with the depression.[30] The Social Democrats' policy had two important aspects; one was a commitment by the state to restore full employment through a Keynesian type of macroeconomic planning; the other was a commitment to a universal and egalitarian system of social rights. This system emphasized flat rather than wage-related benefits, and it sought to encompass all major income risks and cover not only manual workers, but also farmers and salaried employees. In other words, social rights became an attribute of citizenship rather than of occupation. Consistent with socialist ideology, the system aimed at "universal and solidaristic social rights."[31] Concern with equality and solidarity clearly took precedence over individual property rights, which marked an important ideological departure from systems prevailing in other countries.

In the United States and France, the depression also brought on a political realignment. While France had already moved during the 1920s to initiate a substantial expansion of its social insurance sys-

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tem, the United States seemed to move in the opposite direction in the decade after World War I. The emphasis during the 1920s in this country was on "welfare capitalism," which represented an expansion of private voluntary efforts, mainly by larger employers, to provide income protection and other benefits for their employees. This was a solution that was in tune with the prevailing political climate and was fully protective of property rights. Unfortunately, the depression soon dramatically demonstrated that neither welfare capitalism nor the limited public assistance programs of the individual states had provided an institutional framework capable of coping with massive economic insecurity. There was a broad upsurge of demand for relief from distress, not only from workers, but from businessmen, farmers, and homeowners, as well as from state and local governments. Leaders in business and labor who had long supported the voluntary alternative now saw the need for a social policy at the federal level.

Resisting demands for a universal pension program and other benefits financed from general revenue, President Roosevelt and his advisers opted for a much more limited approach, which became the Social Security Act of 1935. The novelty of this act was not merely in bringing the federal government into the welfare field on a large scale, but more significant from our point of view, in the establishment of important new social rights. The United States was thereby brought into line with other industrialized countries, but there was something peculiarly American about these new social rights. This was the strong concern of the policy planners with equity—in other words, property rights. In contrast to the Swedish model, which aimed deliberately at redistribution, the American approach tried to minimize redistribution. The right to benefits in Sweden was treated as an expression of social solidarity, whereas in the United States, every effort was made to convey the notion that benefits were based on a "contributory contractual relationship."[32] For political and ideological reasons, the planners sought to design a social security system that interfered as little as possible with free market allocation. The social insurance programs had to be self-financing, without recourse to general revenues. Under the 1935 Act, old age pensions, which were not payable until 1942, were calculated on the basis of cumulative contributions until retirement. There were no benefits for dependents or survivors. The unemployment insurance system was

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modeled after the earlier workmen's compensation program. The idea was that the cost of unemployment should be borne by the enterprises that supposedly generated it and ultimately passed on to consumers via the competitive market. Unemployment was not treated as a risk of a capitalist economy, but as a cost that could either be prevented through better management or, if unpreventable, should be borne by consumers as an inherent cost of producing specific goods in accordance with market conditions.

In its initial stage, the American system of social income rights was thus designed more to compensate for what were considered failures of the market system than to provide a guaranteed right to minimal income for the individual citizen or his family. It provided a limited social right to income, but not necessarily for those who needed it the most. For those who could not help themselves through this system of compulsory self-help, the 1935 Act provided an improved system of public assistance. Such assistance was of course means-tested rather than available as a matter of right associated with occupation or citizenship. The means-tested benefits reduced economic inequality but it did so at the expense of increased status inequality.

The third "welfare state" model that appeared during the 1930s was that of Nazi Germany.[33] Although the full application of this model was never realized, because of internal resistance and the outbreak of World War II, its main thrust is nevertheless worth brief mention. The leaders of the German Labor Front (the body of the Nazi party that replaced the trade unions) looked upon welfare policy as a means to mobilize and discipline the work force. Health care and rehabilitation became instruments for restoring and maintaining the physical vigor of the population for the purpose of increased production or eventually war. Benefits for mothers and children were designed to contribute to enhanced purity of the race. Leisure-time benefits became vehicles for political indoctrination. Unemployment benefits were abolished and disability payments severely restricted to discourage malingering. Doctors were admonished to report would-be malingerers to the authorities for prosecution. One aim, which was not realized, was to transform pensions into quasi-political rewards for contribution to the national community. The funds accumulated by the social insurance programs, which used to be invested in social projects such as hospitals, were diverted into the arms build-up. The National Socialists thus turned the great German tradition of

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social rights into a ruthless instrument of political and social control, in the name of national renewal and social purity. The ideological emphasis was on sacrifice rather than benefits. If the Nazis had fully succeeded, social rights as used in the context of this paper would have been eliminated even though payments and services might have continued in most cases.

THE POST-WORLD WAR II ERA

In the period since the Second World War, the development of social rights went through three main phases, which of course did not apply equally to all countries. In the immediate postwar period, there was a widespread reaffirmation of the basic concept of social rights, which were now generally interpreted as an attribute of citizenship. From the mid-1950s until the early 1970s, there was a major expansion of government-provided benefits and services in all industrial countries. This expansion very substantially enhanced the importance of social rights. Finally, since the mid-1970s there has been a worldwide welfare state crisis, which will be dealt with in the next section.

At the end of World War II there was an almost universal yearning for increased human solidarity and better protection against the evils that had plagued mankind during the depression and the war. There were deep aspirations to ban violence, hunger, unemployment, and disease. The sharing of hardship and danger as well as the greatly enlarged experience with governmental planning during the war conditioned many countries to undertake a review of their systems of social protection. All segments of society had suffered. It was no longer a question of protection merely for the poor or the underprivileged. There was a widely felt need for universal guarantees of a minimum level of security for all citizens.

Such aspirations and corresponding welfare reform proposals had been articulated in the 1942 report by Sir William Beveridge, which became an international reference standard for social rights after the war. Beveridge produced a plan for Britain that aimed at establishing a social right to freedom from want. He interpreted this as a guaranteed right to the minimum income needed for subsistence.[34] It was to be no more than a minimum, but the same minimum for all citizens. Social protection was to be universal with regard to occupations,

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comprehensive with regard to risks, and equal with regard to people. The protection included income payments and social services, especially regarding health, education, and housing, as well as a governmental commitment to maintain full employment. This was an egalitarian program that clearly restricted the role of the free market and limited property rights. On the other hand, by defining social rights in terms of a subsistence minimum, the encroachment of the free market and property rights was constrained within narrow boundaries. Unlike the Social Democratic model, which emphasized solidaristic redistribution, the Beveridge plan still stressed self-help and individual protective measures to complement the socially provided minimum.

The Beveridge ideals of universal and comprehensive income protection had wide international appeal in the postwar world. They inspired the *Charte de la Résistance* drawn up in March 1944 by the French National Resistance Council. The *Charte* called for a "complete plan of social security designed to ensure the means of existence for all citizens."[35] The same ideals became embodied in the 1944 "Philadelphia Declaration" of the International Labor Conference, the 1948 United Nations Universal Declaration of Human Rights, and the constitutions of many new countries.

The objective of a socially guaranteed minimum level of income, supplemented by social services and governmental commitment to full employment, was almost universally accepted in the immediate post-World War II period. Its interpretation and realization differed from country to country, with Great Britain and the Scandinavian countries taking the lead. The Beveridge ideals of universal but minimal protection reflected a searching for security in a war-ravaged world that feared a return to high rates of unemployment. Few people could expect, in the late 1940s, that over the following two decades the major industrial countries would experience an unprecedented period of sustained economic growth. Would the spectacular rise in the standard of living of the average citizen be consistent with a policy of social rights that guaranteed only a minimum of subsistence? Would such a minimum income for an aged or disabled person not inspire a serious sense of deprivation relative to those still employed, and create a growing class of underprivileged and discontented? Could societies that were growing wealthier year after year not guarantee more than a subsistence minimum for their citizens?

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A new conception of social rights emerged in the debate over social insurance reform in West Germany during the early 1950s.[36] Although their programs were in serious need of reform after the war, the Germans, mainly for internal reasons, had little inclination to follow the Beveridge model. Both the ruling Christian Democrats and the opposition Social Democrats agreed that social rights ought not to be limited to mere guarantees of a subsistence minimum. But while the Social Democrats favored a more redistributive and interventionist role for the government, the Christian Democrats leaned toward a "social market economy," which entailed relatively high but "market consistent"—that is, differentiated—social benefits.[37] In spite of considerable disagreement, the Adenauer Government was won over to the position of its Minister of Labor, who argued strongly that the time was past when social benefits aimed merely at a minimal supplement to self-help. That approach, he noted, was expedient in Bismarck's time, but "today the task of old age pensions is to safeguard for those no longer at work . . . the standard of living they earned through a lifetime of labor."[38]

This new conception of old age pensions thus involved a socially guaranteed maintenance of economic status. The departure from the Beveridge philosophy involved not merely a departure from minimum guarantees, but also a departure from egalitarianism. For the status that was to be maintained was determined largely by the market and hence was inegalitarian. The new conception was applied in the 1957 German pension reform, which provided for the "dynamization of pensions." The level of an individual's pension was tied to the real growth of national income and protected against inflation. In this manner, pensioners as a group were allowed to share in the country's rising standard of living. Similar adjustments were made later in other benefit programs.

The German acceptance of the concept of maintenance of economic status reflected a way of thinking that was gaining support in other countries as well. Significantly, even in England and Sweden, where relatively low flat benefits were traditional, there were rising pressures for higher, wage-related levels of benefit. In both countries, inflation was eroding the purchasing power of established benefits, and rising real wages were undermining the relationship between the incomes of pensioners and active workers. The increasing inadequacy of egalitarian minimal benefits furthered the growth of inequality

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of protection by stimulating the development of voluntary occupational pensions. In Britain, low flat benefits required more and more supplementation from means-tested public assistance, something Beveridge had hoped to avoid. It was not possible to raise the level of flat benefits without abandoning the principle of equal contributions and equal benefits, or putting an excessive tax burden on the lowest paid workers. After several years of debate, both Britain and Sweden introduced higher, earnings-related pensions in 1959.

These developments in what were considered to be the most advanced industrial welfare states were only symptomatic of what turned out to be an unprecedented explosion of social rights between 1950 and 1975. Not only in Europe, but also in the United States, benefits under existing programs were increased, new kinds of programs added, new social services introduced, and higher percentages of the population covered. The American "War on Poverty" of the 1960s was both an indication that poverty had been rediscovered as a political issue and a symbol of the belief that policymakers, or their advisers, knew how to eradicate poverty for good. While the economies of the industrialized countries were expanding rapidly, social transfer payments grew even faster. Average transfer payments as a percentage of gross national product more than doubled between 1950 and 1975, from 7.2 to 15.3 percent for a dozen countries in Western Europe and North America.[39] A recent European Economic Community document indicates that social security expenditures kept rising during the 1970s (Table 1). In the United States, total public welfare expenditures in 1979 were 18.5 percent of the GNP, although this figure is not strictly comparable to the EEC data.[40] It would take us too far afield to explore the underlying causes for this tremendous benefit expansion since 1950. Whatever the causes, there can be no question that in all Western countries, a major reevaluation of the social rights of individuals and families took place. What is not clear is the extent to which this reevaluation was purposefully designed and to what extent it was an unanticipated consequence of the complex dynamics of the welfare state. In any system in which specific groups benefit but the costs are diffused over a much larger population, there is an inherent expansionary force. Similarly, the almost universal adoption of pay-as-you-go methods of financing after World War II greatly reduced the initial burden of increased benefits in an expanding economy with many programs in

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TABLE 1. Social Security Expenditures as Percentage of Gross National Product

	1970	1980
Belgium	18.5	27.7
Denmark	19.6	28.0
France	19.2	25.8
Germany	21.4	28.3
Ireland	13.2	22.0
Italy	18.4	22.8
Luxembourg	16.4	26.5
The Netherlands	20.8	30.7
United Kingdom	15.9	21.4

SOURCE: "Communication from the European Commission to the EEC Council of Ministers," in *European Industrial Relations Review* no. 108 (January 1983), p. 29.

a start-up phase. The linkage of benefits to economic growth and the protection against inflation were additional factors that promoted benefit increases, even during the period of low economic growth of the 1970s. After giving up the notion of minimum benefits, most countries aimed at a certain earnings replacement rate. In the United States, the pension for an aged couple, where the working spouse was an average worker in manufacturing, rose from 44 to 66 percent of the pre-retirement wages between 1969 and 1980. In Sweden, the corresponding increase was from 56 to 83 percent; in France, from 56 to 75, and in the United Kingdom, from 43 to 47.[41] In most countries, social security has become the dominant rather than a supplementary source of income protection.

THE CURRENT CRISIS

The combination of rapidly rising benefits and lagging revenues during the 1970s and early 1980s has necessarily led to the present welfare state fiscal crisis. The crisis reflects, first of all, the revenue and expenditure constraints imposed by current economic conditions, but there are also long-term problems caused by the rising proportion of aged persons in society, the maturing of pension programs, and the unabated escalation of medical care costs. These costs in turn are related both to the proportion of aged persons and to the

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rapid technological advances in medicine. Whatever the causes of the crisis, it cannot but necessitate a reexamination of social rights.

For the last few years, there have been strong pressures in America and Europe to contain or even cut back on the welfare state. At the political level, there have been manifestations of voter reactions to heavy tax burdens, although such tax backlashes have been more typical of the United States, where the tax and contribution burden is relatively lighter (30.7% of gross domestic product in 1980) than in the countries like Sweden or France, where this burden is much heavier (49.9% and 42.5% in 1980).[42] In spite of the frequent complaints of fiscal overload and calls for austerity, no country so far has undertaken any steps to dismantle any major welfare state institution. There is universal recognition that even when the economies recover, the rate of growth of welfare expenditures of the last thirty years will be unsustainable. At the same time, however, there is evidence of widespread support for existing social policies. A recent cross-national analysis notes that "the existence of a wide range of social programs is firmly established not only in the institutional structures of modern society, but in the opinion structures of modern populations as well."[43]

If the survival of the welfare state is not seriously in question, there is nevertheless widespread dissatisfaction with it. There have always been opponents of socially guaranteed protection, but much of the new criticism comes from people who support the principle of social protection. Many supporters seem to feel that in some sense the system of protection has reached or even exceeded its optimal limits. For some, this means that the incremental burdens are exceeding the additional benefits; for others, it means that the system has reached the limits of effectiveness, regardless of the cost involved; and for yet others, it means that the system has become perverse in the sense that it creates some of the problems it was designed to resolve. The almost universal postwar acceptance of a safety net of social protection has given way to a deterioration of social consensus as comprehensiveness and levels of protection increased.

Leading among the critics have been the economists, especially those associated with the renewed popularity of the free market. Their main charge is that the welfare state is undermining the very foundation of the market economy that makes the welfare system possible. This undermining takes various forms. The pay-as-you-go

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pension system tends to reduce savings and, ultimately, capital formation, productivity, and growth. Social security, they say, further weakens the economy by lowering the retirement age and therefore reduces the labor supply. The tax burden is seen as having an adverse effect on the supply of both capital and labor, on initiative and on willingness to take risks. Unemployment insurance saps the willingness to work and raises unemployment. Payroll taxes distort the allocation of resources to the detriment of employment. Health insurance becomes a major cause of the rapid rise in the cost of medical care.

All of these arguments have various degrees of support in economic theory, and many have been tested empirically. By far the most extensive testing has been carried out on the economic effects of the U.S. social security system. In a recent evaluation of the lengthy and controversial debates on the issue, Henry J. Aaron, a leading authority, comes to the conclusion that "there is no evidence about the economic effects of social behavior sufficiently strong to justify significant changes in the fundamental retirement system of the nation."[44] The results of the studies in the United States, however, are by no means unambiguous. Nor does the experience of other countries indicate clear-cut effects on saving and investment. In the United Kingdom, for instance, state pensions have not affected savings, while in Italy, increased pensions actually led to increased private savings.[45] The data available on the impact of income redistribution are equally inconclusive. After reviewing the data on real economic growth in relation to redistributive efforts and income protection for twelve OECD countries from 1960 to 1977, Lester Thurow concluded:

> Some good performers have a high degree of inequality and no redistribution; others have a low degree of inequality and substantial redistribution. Poor economic performers are equally mixed in terms of the degree of inequality and the extent of this redistributional effort. Whatever the connection between equity and efficiency, it is not a simple one where the willingness to tolerate inequality guarantees efficiency or is necessary to achieve efficiency.[46]

Nor do available data support the argument that high welfare state expenditures are responsible for stagflation and budget deficits. In a study of European countries from 1970 to 1977, Jens Alber found that "the countries with rapid welfare state developments in the

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1970s had similar economic growth rates as the nations with more restrained social spending, but they tended to have lower inflation rates, lower public deficits . . . and lower increases in deficits."[47]

Another current criticism of the welfare state is that it substitutes bureaucratic for personal relationships, thereby tending to undermine social solidarity and causing social instability. "The welfare state has grown out of a basic feeling of solidarity with fellow human beings; but there is a risk that the design of the programmes will weaken the sense of moral responsibility for those who are close to oneself, be it family, neighbors, fellow workers or friends."[48] It is not easy to find convincing evidence to support this argument. Evidence of a decline in moral responsibility may be as much a cause as a consequence of an expanding welfare state. On the other hand, the welfare state does tend to create groups of beneficiaries whose ability to organize politically may enable them to take advantage of the less well-organized majority. The result would be a source of potential political conflict focusing on redistribution in place of the traditional conflict over primary distribution.[49]

With the currently high levels of taxation for social expenditure, the classical liberal stricture that the welfare state violates property rights and reduces individual liberty also needs to be reconsidered. There can be no question that the welfare state limits some aspects of freedom, such as the freedom to dispose of one's property, freedom from regulation, and freedom of choice with respect to some services. The real question, however, is whether the social rights established by the welfare state on balance increase or decrease human freedom. This depends, of course, on how various aspects of the freedom of different individuals are weighted. My loss of freedom due to a small tax may be less important than someone else's freedom from starvation, but a high tax may not be justifiable if the purpose is to maintain that same person in comfort. On the other hand, I may tolerate the loss of freedom even if redistribution favors some wealthier persons, if it allows large numbers of people to be freed from a status-depriving means test. The complex issues of the effects of the welfare state on individual freedom were the subject of a Social Science Research Council Conference held at the University of York in April 1981. The papers delivered at the conference supported the view that, on balance, the welfare state increases human freedom, but

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such a conclusion, of course, necessarily reflects the values of the authors.[50]

* * *

After one hundred years of an almost unbroken expansion of social rights, there is no longer a consensus favoring further growth, although this does not mean that the welfare state has reached some kind of absolute economic limit. The arguments of both classical liberals and Marxists notwithstanding, capitalist economies have demonstrated a remarkable capacity to carry the burden of extensive social rights. No one, however, would argue that there are no economic limits to social rights. Such limits can be readily perceived, especially in relation to medical care. Rapid advances in medical technology may well lead to treatments that are too costly to be included in guaranteed social benefits. This is one area where social rights may soon encounter harsh distributive dilemmas.

The present sense of disillusionment with the welfare state, however, seems to reflect also important noneconomic causes, among them a conflict of values in affluent postindustrial societies, as well as a sense of frustration with the elusiveness of welfare state goals. In the affluent welfare states there is a need to strike a new balance between such values as security, equality, and solidarity on the one hand, and individual liberty, individual merit, privacy, and self-determination on the other; rising affluence weakens the former and increases the importance of the latter. The elusiveness of the goals is a mostly unanticipated consequence of welfare state policies and programs. Achievement of greater equality, for instance, is often frustrated because the welfare state itself creates new inequalities and inequities. Its treatment of women is a case in point. A major complaint of working wives under the American social security system is that, even though they may have paid taxes for years, their benefits may be no larger than those of wives who were never in paid employment, and consequently paid no taxes. The removal of economic causes of individual insecurity often leads to political and administrative sources of insecurity and invasion of privacy. Social solidarity itself becomes threatened, as rising costs require increasing redistribution from the economically active to the dependent population. Recognition of these trade-offs is not an argument against social rights as

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such; it is a recognition of the need for continuous, enlightened reexamination of these rights in the light of changing values and conditions. Although there is conflict of human rights under capitalism, it has to be understood that this is a limited conflict between desirable ends, which is an indication of the achievement rather than the failure of capitalism cum democracy.

ENDNOTES

I am indebted to the participants of the Emory/Daedalus symposium on Human Rights for their criticism of an earlier version of this paper, but they are not responsible for remaining inadequacies.

[1]See T.H. Marshall, *Class, Citizenship and Social Development* (Garden City, N.Y.: Anchor Books, 1965), p. 78.

[2]Chicago: University of Chicago Press, 1962.

[3]D.C. North, *Structure and Change in Economic History* (New York: W.W. Norton, 1981), chapter 11.

[4]Marshall, *Class, Citizenship and Social Development,* p. 91.

[5]K. Polanyi, *The Great Transformation* (Boston: Beacon Press, 1957), p. 73.

[6]Marshall, *Class, Citizenship and Social Development,* p. 78.

[7]John Stuart Mill, *Principles of Political Economy* (London: 1848), vol. 2, p. 317.

[8]Quoted in G.V. Rimlinger, *Welfare Policy and Industrialization in Europe, America, and Russia* (New York: Wiley, 1971), p. 114.

[9]See F. Luetge, *"Die Grundprinzipien der Bismarckschen Sozialpolitik," in Jahrbücher für Nationalökonomic und Statistik* 134 (1) (1931): 580-96; also H. Rothfels, "Bismarck's Social Policy and the Problem of State Socialism in Germany," *Sociological Review* 30 (1938): 81-94, 288-302.

[10]G. Schmoller, *Die Soziale Frage* (Munich: Dunker & Humblot, 1918), p. 633.

[11]See E.C. McCreary, "Social Welfare and Business: The Krupp Welfare Program," *Business History Review* 42 (Spring 1968): 24-49.

[12]A.V. Dicey, *Lectures on Law and Public Opinion in England during the Nineteenth Century* (London: Macmillan, 1914), Lecture 9.

[13]*My Apprenticeship* (London: 1926), pp. 154ff.

[14]B.B. Gilbert, *The Evolution of National Insurance in Great Britain* (London: Michael Joseph, 1966). p. 60.

[15]Roy Hay, *The Origins of the Liberal Welfare Reforms 1906-1914* (London: Macmillan, 1975), p. 31.

[16]Ibid., p. 29.

[17]On Germany, see Walter Vogel, *Bismarck's Arbeiterversicherung* (Brunswick, Federal Republic of Germany: Esterman, 1951); on Britain, Roy Hay, "Employers and Social Policy in Britain: The Evolution of Welfare Legislation 1905-14," *Social History,* January 1977, pp. 434ff.

[18]For a more detailed argument, see G.V. Rimlinger "The Emergence of Social Insurance: European Experience before 1914," in P.A. Köhler and H.F. Zacker, *Beiträge zu Geschichte und aktueller Situation der Sozialversicherung,* Schriftenreihe für Internationales und Vergleichendes Sozialrecht (1983), vol. 8, pp. 111-24.

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[19]See Henri Hatzfeld, *Du Paupérisme à la Sécurité Sociale* (Paris: Armand Colin, 1971), chapter 4.
[20]Ibid., p. 268.
[21]Ibid., p. 268 ff.
[22]Quoted in Theda Skocpol and John Ikenberry, "The Political Formation of the American Welfare State in Historical and Comparative Perspective," paper presented at the Meetings of the American Sociological Association," San Francisco, September 1982. Italics added.
[23]J.R. Commons, *Myself* (Madison: University of Wisconsin Press, 1963), p. 143.
[24]D.C. McMurry, "The Political Significance of the Pension Question, 1885-1897," *Mississippi Valley Historical Review* 9 (June 1922): 19-36.
[25]Skocpol and Ikenberry, "The Political Formation of the American Welfare State."
[26]McMurray, "The Political Significance of the Pension Question," p. 25.
[27]For a discussion of the 1931 crisis, see B.B. Gilbert, *British Social Policy 1914-1939* (Ithaca: Cornell University Press, 1970), pp. 162-75.
[28]See B. Weisbrod, "The Crisis of German Unemployment Insurance in 1928-29 and Its Political Repercussions," in W.J. Mommsen, *The Emergence of the Welfare State in Britain and in Germany* (London: Croom Helm, 1981), pp. 188-204.
[29]D. Zöllner, "Germany," in *The Evolution of Social Insurance,* edited by P.A. Kohler and H.F. Zacher (London: F. Pinter, 1982), p. 105.
[30]H. Heclo, *Modern Social Politics in Britain and Sweden* (New Haven: Yale University Press, 1974), p. 100.
[31]See Gösta Esping-Andersen, *The Social Democratic Road to Power,* chapter 4 (forthcoming).
[32]See J. Douglas Brown, "The American Philosophy of Social Insurance," *Social Service Review* 30 (March 1956); for a contrast of U.S. and Soviet philosophies, see G.V. Rimlinger, "Social Security, Incentives, and Controls in the U.S. and U.S.S.R.," *Comparative Studies in Society and History* 4 (November 1961): 104-24.
[33]For a more detailed analysis, see G.V. Rimlinger, "Social Policy under German Fascism," (forthcoming in a book on models of the welfare state, edited by Lee Rainwater and Martin Rein).
[34]Sir William Beveridge, *Social Insurance and Allied Services,* American Edition (New York: Macmillan, 1942), p. 14.
[35]G. Bremme, *Freiheit und Soziale Sicherheit* (Stuttgart: Enke, 1961), p. 160; P. Laroque, "From Social Insurance to Social Security: Evolution in France," *International Labour Review* 57 (6) (June 1948): 565-90.
[36]For a detailed analysis, see H.G. Hockerts, *Sozialpolitische Entscheidungen im Nachkriegsdeutschland* (Stuttgart: Klott-Cotta, 1980).
[37]See G.V. Rimlinger, "The Economics of Postwar German Social Policy," *Industrial Relations* 6 (February 1967): 184-204.
[38]Quoted in G.V. Rimlinger, *Welfare Policy,* p. 171.
[39]Jürgen Kohl, "Trends and Problems in Postwar Public Expenditures in Western Europe and North America," in P. Flora and A.J. Heidenheimer, *The Development of Welfare States in Europe and America* (New Brunswick, New Jersey: Transaction Books, 1981), p. 339.
[40]*Social Security Bulletin,* Annual Statistical Supplement 1980, p. 55.
[41]Jonathan Aldrich, "The Earnings Replacement Rate of Old-Age Benefits in Twelve Countries," *Social Security Bulletin* 45 (November 1982): 5.

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[42]Data are from OEDC as reported in "Les Prudences de l'Etat Providence," *L'Express,* February 25, 1983, p. 27.

[43]R.M. Coughlin, *Ideology, Public Opinion and Welfare Policy,* Institute for International Studies (Berkeley: University of California, 1980), p. 156.

[44]Henry J. Aaron, *Economic Effects of Social Security* (Washington, D.C.: Brookings Institution, 1982), p. 83.

[45]*The World Crisis in Social Security,* edited by J.J. Rosa (San Francisco: Institute for Contemporary Studies, 1982), pp. 31, 59.

[46]"Equity, Efficiency, Social Justice, and Redistribution," in OEDC, *The Welfare State in Crisis* (Paris: OEDC, 1981), p. 138.

[47]Jens Alber, "Some Causes and Consequences of Social Security Expenditure Development in Western Europe, 1949-1977," European University Institute Working Paper No. 15 (mimeo., Florence, 1982), p. 26.

[48]Per Schreiner, "Economic Prospects and Some Implications for Social Policies Development," in OECD, *The Welfare State in Crisis,* p. 117.

[49]For an exploration of this issue, see Jens Alber, "The Emergence of Welfare Classes in West Germany: Theoretical Perspectives and Empirical Evidence," European University Institute Working Paper No. 21 (mimeo., Florence, 1982).

[50]See especially R.E. Goodin, "Freedom and the Welfare State," Joan Higgins, "Public Welfare: The Road to Freedom?" and Peter Jones, "Freedom and the Redistribution of Resources," all in *Journal of Social Policy* 11 (part 2) (April 1982): 149-76, 177-200, 217-38.

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Leszek Kolakowski

Marxism and Human Rights

In the German version of the "International," the refrain ends with the words *Internationale erkämpft das Menschenrecht* (the "International" wins human right). The song, to be sure, while written without Marxist inspiration, was adopted as the official hymn of the Third International, which was supposed to be the only political embodiment of Marxist doctrine. From this it might seem that the idea of human rights was part of the ideology of the communist movement. Alas, on closer view, we find that this was not so. The expression, which appears neither in the French original nor in other translations of the song, seems to have been inserted into the German text principally to rhyme with the preceding line *(auf das Letzte Gefecht)*. This is an oddity not only in the history of the hymn, but in the history of Marxism as well. *Nous ne sommes rien, soyons tout!* is certainly a more accurate rendering of Marxist ideology.

In inquiring into the relationships between Marxism and human rights theory, it may be useful to define both terms, a difficult task, given the enormous variety of definitions that exist and the controversies they generate. While no set of definitions will satisfy everyone, if we reduce the problem to its theoretical core—dismissing the many peripheral variants of Marxism and setting aside the intricate questions that relate to what may be included as human rights and the extent that their implementation depends on contingent historical conditions—we may be able to make some progress.

When we say that we accept human rights, we are saying in effect that we accept human rights as *valid*. But what does that mean? It

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does *not* mean that those rights make up, or have always and everywhere made up, a part of all legal systems. Such a statement would be false, and in any case irrelevant to what most people believe to be true about human rights—that these rights would be valid even if no positive law included them, explicitly or implicitly. Conversely, if all legal systems in the world guaranteed them, this by itself would not be sufficient grounds for accepting them. Their validity, then, does not depend positively or negatively on actual legislation, past or present.

Nor do those who accept the concept of human rights claim that it is an arbitrary norm which they accept simply because they like it, and that it achieves validity by the force of their decree. To assert the validity of human rights is not a sheer act of commitment of which the justification lies in its very performance. It means more than simply saying that "we (I) decide that everybody *ought* to be given these rights," but rather to declaring that "it is the case that everybody has these rights." The idea of human rights, in other words, has no firm basis except in terms of natural law theory, which may, in turn, have a theological or transcendentalist (say, Kantian or Husserlian) justification.

Natural law theory does indeed imply that it is the case that stealing, for example, is wrong; rightness or wrongness are inherent properties of certain human acts, according to whether they conform or conflict with the rational nature of man. Those immanent moral qualities may or may not depend on divine decrees. In the tradition of late medieval nominalism (and in Cartesian metaphysics as well), they resulted from God's free verdict, which might have been different from—indeed, opposite to—what it actually was. God decided that it was wrong to kill one's father; given the irreversibility of God's law, patricide has since been inherently and immutably sinful. Seventeenth century natural law doctrines rejected the "decretalist" theology and instead made a distinction between natural law and divine positive law, arguing that while the latter resulted from God's decree alone, natural law was inherent in the nature of things and could not be changed, even by the Creator himself. Grotius, for one, took this position.[1] Leibniz argued that God orders what is immanently good and forbids what is immanently evil, instead of making acts and things good or evil by the force of his own free decision.[2] The very idea of *homo,* Pufendorf argued, included his inherent dig-

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nity.[3] While making the moral order of things independent of our knowledge of God, natural law theory was based on a metaphysical principle, which stated that the order of nature displayed immutable moral characteristics, and that it was not only an order of causes and effects, but of values as well.

To the extent that the idea of human rights was logically dependent on the belief in natural law, it was clearly unacceptable to the adherents of empiricism and of all varieties of historicism, including Marxism. A distinction on this point is necessary, however. The human rights concept includes three characteristics, among others, important for this discussion: first, these rights are valid because of the inherent dignity of being human and they make up part of the natural order, rather than being established by decree or by positive law; second, this order is immutably valid wherever human beings live together and interact with one another; third, these rights, however specified, are rights vested in all individuals and *only* in individuals, not in social groups, races, classes, professions, nations, or other entities.

On these assumptions, it appears that a Marxist's case against human rights would be much stronger than the one made by an empiricist. The latter, while not accepting the first of the three premises, dismissing the notion of an "objective" order of values and rights, and the idea of their permanent "validity"—insofar as it is not a validity established by specific legislation—might still, without fear of contradiction, commit himself to the idea of human rights. He might not believe that God or nature made certain human actions wrong or right, but he could admit that there is nothing improper, illicit, logically unsound, or empirically forbidden in our reacting to human actions by saying, "this is wrong," "this is noble," "this is good." An empiricist qua empiricist is not bound to preach moral nihilism. He may believe, for example, that torture is wrong and that we ought to support and fight for a society in which all people enjoy guarantees against being tortured.

In a limited sense, an empiricist may even accept the second premise; he may, without being inconsistent, state that though no universal validity may be spoken of in a particular case, he himself is ready to stand up for human rights in all imaginable conditions. To be sure, since his position cannot be defended in terms of "validity," he is helpless before the challenge of an adversary, and must concede that,

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in cognitive terms, those who deny the idea of human rights are in a no worse position than he. Barred from committing himself intellectually or theoretically to the doctrine of human rights, he is nevertheless free to abide by his practical commitment to it.

A historicist may find himself in a somewhat analogous position. While believing that all values and standards, both cognitive and moral, "express" specific needs, aspirations, and conflicts of the particular civilization in which they happen to arise, he knows that it is pointless to dwell on their ahistorical, let alone eternal, validity. This, however, does not prevent him from admitting that as a participant in a particular culture, he shares its norms, and that he is not being inconsistent if he "believes" in those norms, aware though he may also be of their historical relativity.

A Marxist's position is far more radical. Within his conceptual framework, he is not only bound to take the historicist's standpoint, dismissing all the claims of natural law theory, all the beliefs in everlasting moral order or in immutable rights, but, to be consistent, he must positively oppose the concept of human rights even in its historically relative form; he is ideologically committed to reject the very idea.

The conflict between Marxist doctrine and human rights theory consists in something more than the idea that all values and rights, in Marxist terms, are nothing but the temporary products of particular relationships of production, nothing but the opinions that particular classes use to express their vested interests, to give them an illusory ideological shape. For to the Marxist, both the concept of liberty and the idea of human rights, as defined by Enlightenment thinkers and ideologists of the French Revolution, are the specific expressions of a bourgeois society that is on the verge of collapse. Marx's writings, from the "Jewish question" onward, are wholly dismissive of all claims made to the lasting validity of "bourgeois freedom" and unremovable human rights. The idea of the individual's rights, Marx explains, implies a society in which the interests of each person is naturally and inevitably opposed to the interests of others, a society incurably torn asunder by the clash of private aspirations. The dominant motivations in this society are bound to be egoistic—not as a result of the corruption of human nature—but because of the character of the economic system, which is inevitably conflict-laden. All rights and liberties in bourgeois society simply assert and codify the

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simple fact that each individual's aspirations and interests inevitably conflict with, and are limited by, the interests and aspirations of others. Since the civil society is a place of incessant and all-pervasive war, where no real community is possible, the state steps in to provide an illusory unity, to set limits to the conflicts by imposing restrictions on hostilities. These restrictions appear in the form of civil liberties, which necessarily take on a purely negative character. Ideological legitimacy is given to the system by various social contract theories. Communism, in its promise of abolishing classes and class struggle, thereby cutting out the roots of social conflict, makes the bourgeois "negative freedom" and human rights—rights of individuals isolated from, and hostile to, one another—useless. The division between civil society and the state, the distinction between the two, is done away with; "real life" and spontaneous community, having absorbed the state, law, and other instruments of the government that kept bourgeois society, with its privileges, exploitations, and oppressiveness intact, serving to perpetuate it, has no need of such supports. Communism ends the clash between the individual and society; each person naturally and spontaneously identifies himself with the values and aspirations of the "whole," and the perfect unity of the social body is recreated, not by a return to the primitive community of the savages, as the Romantics would have it, but by a movement upward on an "ascending spiral" that restores human meaning to technological progress. Human rights, in other words, are simply the facade of the capitalist system; in the new, unified society they have become utterly irrelevant.

Although Marx despised "bourgeois" rights, he never argued, as the anarchists did, that it did not matter whether those rights were valid in bourgeois society. The difference between a despotic and a liberal order within the "capitalist mode of production" was an important one to Marx. During the 1848-49 revolution and thereafter, he urged workers' parties to ally themselves with the democratic bourgeoisie to fight against tyrants; republicans were to be supported against royalists. This, however, was not a matter of principle but of tactics. While it was true, according to Marx, that no imaginable political changes in a capitalist society could have a socialist meaning, and that the iron laws of the market economy could be obliterated only by a revolutionary upheaval, resulting in the expropriation of the bourgeoisie and the centralization of all economic levers in the

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hands of the state, the workers needed to participate in the fight for democracy; it would improve the political condition of their struggle, preparing them for the final battle against capitalism.

Marxists, therefore, behave consistently when they fight for civil liberties and human rights in despotic nonsocialist regimes, and then destroy those liberties and rights immediately upon seizing power. Such rights, according to Marxist socialism, are clearly irrelevant to the new conflictless, unified society. Trotsky stated clearly that democratic regimes and the dictatorship of the proletariat should be assessed according to their own respective principles; since the latter simply rejected the "formal" rules of democracy, it could not be accused of violating them; if the bourgeois order, on the other hand, did not abide by its rules, it could be rightly blamed.[4] This standpoint cannot even be viewed as cynical, so long as Marxists who fight for human rights guarantees in nonsocialist despotic regimes do not pretend that it is a matter of principle nor that their moral indignation has been aroused, and furthermore make no promise to guarantee these rights once they are themselves in power. (As it turns out, they usually do all three.)

Marx himself did not pretend that capitalist society deserved to be condemned because it was unjust, or that the revolutionary struggle was about *justice*. He abandoned the moralistic approach to social problems early on, and from the moment he defined himself in opposition to the so-called German true socialism, he tried consistently to convince his readers and followers (and himself) that the proper attitude to social changes consisted not in denouncing the moral failures of capitalism, but in analyzing the "natural" tendencies that would inevitably cause it to collapse and bring about the new society. In this society, all would have an opportunity to develop their potentialities to the fullest, asserting their individuality not, however, against the society, but in contributing to its general progress. There was, he believed, no reason to condemn capitalist exploitation in terms of social justice or injustice; the labor force itself was a commodity; the worker, in selling himself to an employer, usually does it conformably to the principle of equivalent exchange. The conflict between capitalists and workers, according to Marx, was one of right against right; force alone would decide between them.[5]

Marx's dismissal of the moralistic approach, to a large extent, was of course a self-deception. Normative premises are hidden in all his

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basic concepts, particularly in his idea of alienation and in his theory of value, as well as in his belief that communism would restore the truly human character of human life. He knew how to achieve the conformity of the empirical man with the idea of *humanitas,* and that this was no less value-laden knowledge than Plato's acquaintance with the world of *ideas.* He failed to explain what motivations men might have for taking part in the struggle for communism; he would have resisted the proposition that they fight for communism for no better reason than that it is bound to win by the force of historical laws.

We cannot, however, while making allowances for this ambiguity—which is fundamental to Marx's work—reinsert the concept of human rights into his theory, distilling the normative content from the hybridlike doctrine that melts determinist prejudice with utopian fantasies into one indistinguishable whole. If Marxism were a purely historical description and prediction, it would not include the human rights doctrine, to be sure, but it would not actively oppose that doctrine either. The incompatibility between the Marxist doctrine and human rights concept comes through clearly when we see Marxism as both a disguised moralism—which it refused to admit—and an appeal for political action, which it explicitly wanted to be. To state that civil liberties and human rights principles are simply an ideological and institutional expression of the market economy that communism intends to abolish is not merely to press forward with a neutral "sociological" description, predicting the most likely outcome of current social conflicts. Rather, it is to affirm positively, encourage, appeal for, and contribute to a social order where civil liberties and human rights are abrogated. This is entirely in keeping with the notion of man as a social animal in its specifically Marxist variant. In a market economy, Marx argued, individuals are victims of the society in that their lives are prey to a contingent historical process that no one, separately or in alliance with others, can control; the society itself is alienated from "real men" and is governed by anonymous laws; individuality, as a consequence of its isolation, is lost. Communism, by restoring genuine community, by turning over to "associated producers" the control of social processes, would recreate the conditions of real individual development.

Marx did not imagine his new society as a sort of concentration camp—quite the contrary. Yet, a number of penetrating critics, even

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in his lifetime, without waiting for the achievements of "real socialism," noticed that if the Marxist social program ever came to be implemented, it would produce a highly despotic regime, making every human being a helpless property of the omnipotent state. Communism was supposed to be, according to Marx, a society in which the "negative freedom" or "bourgeois freedom"—the human rights guarantees—are pointless precisely because everyone willingly identifies himself with the community. Furthermore, since communism is principally the abolition of private property, once the bourgeoisie had been successfully expropriated, clearly, neither the liberties nor the institutions protecting human rights in a bourgeois society would be needed.

It is true that many theorists, especially in the period of the Second International, who considered themselves full-fledged Marxists did not believe that socialism would destroy the rights embodied in the democratic institutions of "bourgeois society," and predicted that socialism, by extending democracy into economic relationships, would enlarge, rather than abolish, the scope of human rights. They took little account of the philosophical generalities in Marx's writings, interpreting his doctrine not as a moral appeal, but as a scientific analysis of capitalist society. Karl Kautsky and Rudolf Hilferding are only two of many who belonged to this company. It is arguable, however, that by suggesting this kind of selective reading, these men betrayed both the spirit and the letter of the canonical scriptures. Lenin, by comparison, was a much more faithful disciple of Marx. By defining the dictatorship of the proletariat as sheer, direct violence, obeying no laws and no rules, disdaining—as a matter of principle—all the institutions of parliamentary democracy, with its elections, freedom of speech, and all the rest, and proclaiming the abolition of the division of power, he followed Marx completely. By accepting—not just in fact, but in theory—the dictatorship of the party, stating unambiguously that the Soviet state would promise neither freedom nor democracy, announcing that cultural activity would be entirely subordinated to political tasks, and that terror would be directly inscribed into the legal system, he showed his fidelity to Marx. By denouncing the "fables about ethics" and asserting that ethics was to be an instrument of the class struggle, by sneering at bourgeois inventions such as the distinction between aggressive and defensive wars or the principle that one should keep internation-

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al agreements, by insisting that there are no permissible limits in political struggle—in all these, Lenin did not depart from Marxist principles. So, too, did Trotsky when, with praiseworthy clarity, he stated that violence is the form par excellence of socialist power; that all human beings are to be considered as a reservoir of the labor force; that compulsory labor is a permanent principle of the new society; that no means ought to be discarded on moral grounds if they can serve the cause of communist power; that communists "were never concerned with the Kantian-priestly and vegetarian-Quaker prattle about the 'sacredness of human life' "; that moral questions are questions of political strategy and tactics; that it is nonsense to attribute any significance to a distinction between democratic and fascist regimes.

Steven Lukes argues that the only Marxists who consistently admit the validity of human rights are "revisionists who have discarded or abandoned those central tenets of the Marxist canon" that are incompatible with such a belief.[6] But in what sense can those who do still be seen as Marxists or consider themselves to be such? While there may be many socialists who, without contradicting themselves, are committed to human rights principles, this is because there is no commonly accepted definition of socialism; the idea itself, older than Marxism, has a number of varieties, some of them obviously incompatible with the Marxian variant. Nevertheless, it is true that some of the scientistically oriented Marxists mentioned above wanted to purify the doctrine of its normative elements, and, in doing so, distorted its sense. The neo-Kantian Marxists tried to supplement the allegedly value-free Marxist theory of society with Kantian ethics. Unlike the orthodox, to whom such a mixture was unimaginable, the neo-Kantians, though accepting that no normative ideas can be inferred from Marxist doctrine, found no logical difficulty in enriching it with the Kantian philosophy of practical reason.[7] I believe that both the scientistically oriented Marxists and the neo-Kantians were wrong. Marxism is no longer itself once we cut it down to its purely "descriptive" content and discard its normative background, which is hidden in the theory of class consciousness, of alienation, and of the future identity of individual and society. The Marxian critique of "negative freedom" and individual rights is a necessary conclusion from this theory.

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Both variants of this half-Marxism proved to be historically abortive. The orthodox current of old, apart from its contribution to the Leninist variant, ceased to exist, and the social-democratic movement, which inherited a part of its legacy, was soon to lose contact with the Marxist tradition. Neo-Kantian Marxism died off with its proponents; attempts to revive some of its tenets in later revisionist movements proved to be short-lived. As a doctrinal corpus with all-explanatory pretensions, prophetic values, and prognostic guidelines, Marxism was virtually monopolized by the Leninist-Stalinist ideology and, without being essentially distorted, has become the legitimizing device of the totalitarian empire. It solved moral issues, not by dismissing them in favor of a value-neutral analysis, but by launching the vision of a new mankind, which would achieve its final liberation by making everything the property of the state, by proclaiming the irrelevance of "bourgeois freedom" and human rights.

The Soviets have assimilated into their jargon—reluctantly and under pressure from the West—some of the phraseology of human rights. Yet, this hardly suggests that they have embraced human rights theory; it is only a symptom of their ideological disarray. No Soviet leader today would dare to repeat Lenin's clear and precise judgments about democracy and freedom, nor are such judgments ever quoted in the Soviet press. That some Western phraseology was adopted—without, of course, altering the political realities or building any barriers that might limit the state despotism—indicates the force of the human rights idea. Yet it was adopted only in a strongly qualified version: when Soviet ideologists speak of human rights, they invariably stress that the chief human right is the right to work, and that this has been granted under the Soviet system only. What they fail to add is that this has been achieved by a system of compulsory labor that was established in principle at the very beginning of Sovietism. Thus the supreme right of man and his supreme freedom are materialized in the form of slavery. Nor do they dwell on the fact that this same freedom has been achieved under National Socialism and fascism.

This question, to be sure, cannot be lightly dismissed. The right to work emerged in the nineteenth century as a response to the helplessness, misery, and exploitation of workers. Even if we do not consider it a human right, to feel useful to other people is an undeniable aspect of human dignity. People who, as a result of social processes beyond

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their control, are unemployed or unemployable in great numbers, who feel redundant and useless, are injured not only in their welfare, but in their dignity as well. It is possible that absolutely full employment—the condition in which nobody ever looks for a job—is incompatible both with the market economy and with technical progress. For that matter, it is incompatible, too, with freedom from slave labor; perhaps it could be implemented only in a slave state. Experience tells us that the market economy is a necessary, although not sufficient, condition of political orders that are able to institutionalize and guarantee human and civil rights. Inevitable economic fluctuations that result in a certain amount of unemployment are tolerable only so long as the unemployment *is* temporary. When economic fluctuations instead produce a large class of people who are doomed permanently to live on the charity of the state, and when such a class continues to grow, society is in danger, not only because of the increase in suffering, frustrations, and criminality, but because many people feel ready to renounce freedom for the security of employment. The dilemma is real and pressing. There are no reasons to believe that traditional liberal advice—to abandon state interventions in economic affairs since these function best when they are left alone—will prove efficacious. If democratic societies prove incapable of coping with mass unemployment, they are likely to encourage totalitarian trends, thereby putting into jeopardy the very institutional framework upon which the observance of human rights depends.

It is often stressed that the idea of human rights is of recent origin, and that this is enough to dismiss its claims to timeless validity. In its contemporary form, the doctrine is certainly new, though it is arguable that it is a modern version of the natural law theory, whose origins we can trace back at least to the Stoic philosophers and, of course, to the Judaic and Christian sources of European culture. There is no substantial difference between proclaiming "the right to life" and stating that natural law forbids killing. Much as the concept may have been elaborated in the philosophy of the Enlightenment in its conflict with Christianity, the notion of the immutable rights of individuals goes back to the Christian belief in the autonomous status and irreplaceable value of the human personality.[8]

Yet, it was not the metaphysical character of the theory that prevented it from being incorporated into Marxist doctrine. And it was

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not the antimetaphysical spirit of Marxism that made it incompatible with the human rights principle. Rather, it was Marxism's fundamentally holistic approach to human life, the belief that progress can be measured only by the ability of mankind to control the conditions, both natural and social, of its life, and that, consequently, an individual's value is not related to his personal life, but to his being a component of the collective "whole." On the assumption that violence is the midwife of progress, one should naturally expect that the ultimate liberation of humanity would consist in the coercive reduction of individuals to inert tools of the state, thereby robbing them of their personality, of their status as active subjects. This is what in fact all the regimes that base their legitimacy on Marxist ideology try to do; they are incapable *in principle,* not as a result of temporary deficiencies, of accepting the idea of human rights, for to accept human rights would indeed demolish their very foundation. What chance of ultimate success is there for this work of aiming at the extinction of personal life, reducing human beings to perfectly exchangeable units of productive processes? That is a separate question, one that I choose to leave aside in this essay. Still, it is possible to say that its success would result not only in the ruin of civilization, but in the ruin of humanity as we know it. My bet, however, is that it will not prove successful, that the human spirit will turn out to be refractory enough to resist totalitarian pressure.

ENDNOTES

[1]*De iure belli ac pacis,* I, 1, X-XV.
[2]*Discours de metaphysique,* II.
[3]*De Officio,* I, 7, 1.
[4]Trotsky, *Writings 1932,* p. 336.
[5]*Capital,* I, chapter 8, 1.
[6]*Can a Marxist Believe in Human Rights?* Praxis 1 (4) (January 1982).
[7]I discuss these questions in more detail in my *Main Currents of Marxism,* especially vol. 2, the chapters on Austromarxists and on Kautsky, and vol. 3, the chapter on Lukacs.
[8]On the Christian origin of modern "individualism," cf. Louis Dumont, "A Modern View of Our Origin: The Christian Beginnings of Modern Individualism," *Religion* 12 (1982).

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John Gerard Ruggie

Human Rights and the Future International Community

VIRTUALLY EVERY STATE IN THE WORLD accepts the concept of human rights, and most grant that human rights are an appropriate area of international concern. A substantial number of states have accepted the UN Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, all members of the Council for Europe have ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms, and seventeen states in the Western Hemisphere adhere to the American Convention on Human Rights. In addition, numerous other international human rights instruments are in place.[1] What do all these developments signify?

To the human rights activist, they mark both the end of a long legislative struggle—which produced results far from perfect but which are perhaps the best that can be expected in this imperfect world—and the beginning of a new struggle: having gotten the signatures of all these King Johns on these various Magna Cartas, what can be done to make them stick? How can greater and more automatic compliance be assured, especially in those areas of the world where it is most needed and at the same time most difficult to assure?

To the theorist of international relations, the growing number of international human rights instruments also poses an intellectual puzzle: What, if anything, does it indicate about the changing quality of international life? To be sure, expressions of what we now call human rights are not unknown in the history of international relations. From the very beginning of the modern state system, there

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were treaty obligations to tolerate heterodox religious worship. Granting justice to aliens has been standard fare, as have been attempts to limit the impact of warfare on civilian populations and to guarantee certain rights to prisoners of war. Various atrocities such as the pogroms in Russia seized the international community in the nineteenth century, and some prompted so-called humanitarian interventions. Under the mandate system of the League of Nations, the rights of native populations formed nothing less than "a sacred trust of civilization," and the International Labour Office took equally seriously the rights of workers. However, as Louis Henkin has pointed out, in most such instances, specific state interests could be clearly discerned, whether to make possible the very existence of a system of secular states, as in the first example, or, as in the last, to provide capitalism with an international response to the siren song of socialism—while making sure that one's trading partners gained no competitive advantage by squeezing labor harder than did anyone else. What, then, is new and different about current international human rights law? It is distinguished principally, according to Henkin, in that it "serves no patent, particular national interest. It is essentially ideological, idealistic, humanitarian; its true and deep purpose is to improve the lot of individual men and women everywhere . . . a unique and revolutionary purpose for international law."[2] If this assessment were proved to be correct, then contemporary international expressions of human rights would signify a qualitative shift in the international community—a shift, borrowing Stanley Hoffmann's apt metaphor, away from the Hobbesian floor, in the general direction of the Kantian ceiling.[3] I admit to being a theorist, so this possibility will be my concern.

A focus on the general features of the international community, as opposed to, say, the practice of specific states or the plight of specific individuals or groups, can be justified by two considerations, one philosophical and the other practical. First, moral claims and judgments inevitably are enclosed within moral orders wherein their validity can be established. These in turn are linked to social/institutional orders, within which moral arguments are recognized and can be vindicated.[4] The international community—since the seventeenth century, a society of states—constitutes one such moral and institutional ensemble. Any change in this ensemble, therefore, could alter the validity of past moral claims and judgments, not least, those con-

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cerning such issues as human rights, which so deeply affect the role of the state itself. Second, and on a more practical level, the international community embodies a matrix of constraints and opportunities for state action. Presumably, this matrix would shift if the moral and institutional ensemble comprising the international community were to change. Those who would pursue an ethical foreign policy must therefore keep an eye on changes in the international community, changes that may make possible what had once seemed immensely difficult, or put out of reach what had seemed so close at hand.

The possibility that contemporary international expressions of human rights reflect a qualitative shift in the international community can be explored along at least three dimensions of change. The first is *normative:* Does the inclusion of human rights concepts into the language of international relations signal a change in prevailing principles of legitimacy, in generally recognized expectations about what is right and just in the international community? The second is *institutional:* Are arrangements on rights such as the two UN Covenants, and others, a sign that the international community is now able to exercise greater authority in an area that was once deemed to be strictly domestic? The third is *social:* Would the progressive realization of international human rights provisions reflect a transformation in the relationship between states and the broader international community, making it less of an anarchical society than it has historically been? In the following sections I briefly take up each in turn, drawing evidence and illustrations for my argument from the human rights instruments associated with the United Nations, as well as the West European and Inter-American regional arrangements.

PRINCIPLES OF LEGITIMACY

"The concept of human rights is a concept of world order. It is a proposal for structuring the world so that every individual's human worth is realized, every individual's human dignity is protected"[5]—such is the assessment of a former U.S. Assistant Secretary of State for Human Rights and Humanitarian Affairs. Elsewhere in this volume, Dieter Henrich examines the philosophical basis of the claim that human rights are valid and universal. My concern here is with the basis and scope of their political legitimacy in the international community.

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When we speak of political legitimacy, we do so in regard to orders of political relations, as, for example, that between the state and the individual. When such an order enjoys legitimacy, it is widely recognized as being right and just, and there exists a shared understanding of why it should be so regarded.[6] Legitimacy does not guarantee that all behavior will conform to principle, but it introduces a systematic bias into the political community, shifting the burden of effort onto those who would contest the legitimacy claim. Likewise, when an order of relations loses legitimacy, the burden of effort is shifted onto those who would seek to maintain it. A good illustration of this process is the erosion of the legitimacy of colonialism in international relations and the growing recognition of the validity of decolonization throughout the twentieth century. The notion of human rights expresses a particular order of relations between state and individual. I shall address first the basis and then the scope of its international legitimacy, to see if either signals any fundamental transformation in the international normative order.

The conventional wisdom in the American study of international relations holds that normative factors are essentially epiphenomenal, mere rationalizations of structures of power. On this point, realists and neo-Marxists, who are often in disagreement, echo one another's arguments in form if not in substance. The paradigmatic realist view runs as follows:

> Like some earlier great powers, we [the United States] can identify the presumed duty of the rich and powerful to help others with our own beliefs about what a better world would look like. England claimed to bear the white man's burden; France spoke of her *mission civilisatrice*. In like spirit, we say that we act to make and maintain world order. . . . For countries at the top, this is predictable behavior.[7]

And here is the neo-Marxist counterpart: "World hegemony . . . is expressed in universal norms and institutions which lay down general rules of behaviour for states and for those forces of civil society that act across national boundaries"—rules that "will not appear as those of a particular class," but which nevertheless "support the dominant mode of production."[8]

In some respects, the postwar history of internationalizing human rights illustrates this argument. Human rights provisions were im-

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posed on the defeated powers via peace treaties, and constitutional safeguards for human rights demanded of both the occupied and newly independent states. Moreover, by any measure, the Universal Declaration of Human Rights, adopted by the UN General Assembly in December 1948, expressed the American liberal tradition more faithfully than any other. And the process of translating the Declaration into treaty form—the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights—at least in the beginning exhibited the predominance of the West in the UN General Assembly.[9]

But there is also counterevidence. The United States abandoned its leadership role in the field of human rights when the Eisenhower Administration announced in 1953 that it would sign neither Covenant; and it was a somewhat battered and diminished hegemon that, during the presidency of Jimmy Carter, signed the Covenants but failed to secure their ratification. And as the membership of the United Nations changed in the interval with the inclusion of the newly independent countries of the developing world, so too did its human rights emphasis: it moved away from civil and political rights toward economic and social rights, and toward collective rights, along with individual rights, in both areas.[10] The two Covenants, which came into force in 1976, clearly reflect compromises—between East and West, North and South. The "sacrilized individual," as one African observer put it scornfully,[11] is still there, but gone is the right to own private property, whereas the principle of permanent sovereignty is firmly entrenched.

The field of human rights has provided particularly fertile soil for an intellectual position that differs radically from "the hegemony of hegemony"—as Richard Ashley has appropriately characterized the conventional wisdom[12]—a position that may be termed the neo-naturalist view. "Human rights is the idea of our time," Henkin has declared. "It asserts that every human being, in every society, is entitled to have basic autonomy and freedoms respected and basic needs satisfied." What is more, not only do human rights serve no particularistic national interest, but they "reflect no single, comprehensive theory of the relation of the individual to society (other than what is implied in the very concept of rights).[13] Or, as Myres McDougal puts it, human rights transcend "all differences in the subjectivities and practices of people."[14] On what grounds, then, do the neo-naturalists

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claim these rights rest? On empirical as well as philosophical grounds: empirically, "it is human rights that are positive national and international law, not the antihuman laws of Hitler or some other jurisprudence of terror";[15] philosophically, "human rights correspond to the nature of man and of his society, to his psychology and its sociology"—that is to say, human rights reflect the emergence of a "new" or "neo" natural rights philosophy.[16]

In some respects, postwar history is illustrative of this argument as well: every state has accepted at least one international human rights instrument; none "dares to dissent from the ideology of human rights today" by offering either philosophical or political objections to the idea of individual rights;[17] and while particularistic state interests surely are served by the selective denunciation of human rights violations, no such interests would appear to be served by the enunciation of the rights in the first place.

Yet, here too there is counterevidence. Only in the West European system does the relationship between state and individual, as embodied in the notion of human rights, firmly enjoy international legitimacy.[18] But the significance of this fact is limited, in practical terms because the West European states are not prone to engage in the systematic violation of these rights in the first place, and in theoretical terms because the political framework of the region has become so thoroughly internationalized and supranationalized that community concern with the rights and welfare of the individual is simply one more element of a broader process of political transformation. The case of the Americas presents somewhat of an incongruity, combining, as it does, the following elements: a liberal inheritance; gross violations of human rights by several current regimes as instruments of government policy; an Inter-American Commission on Human Rights determined to expose violations of the rights to life, the physical liberty and the physical security of the person in particular; and a supportive (hegemonic?) United States.[19] And at the global level, there is a shared vocabulary endorsing human rights in general, but a cacophony of meanings and preferences concerning the vindication of any particular right.[20]

Thus, the record does not fully confirm either the conventional wisdom of the "hegemony of hegemony" school nor the position of the neo-naturalists. Human rights *are* more than a mere rationalization of structures of power. Yet their international normative status

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remains closely dependent upon the projection of power, the defense of interests, and the nature of political community existing among states.

Turning now to the scope of those human rights that enjoy international legitimacy, it is clear that the concept itself has won a universal rhetorical victory and promises to become all-encompassing. This fact, however, obscures rather than signifies any meaningful international normative change. More to the point is the actual pattern of expectations revealed by states: By means of which arguments, and with how much energy and conviction, do they condemn or defend what kinds of action and inaction?

Viewed from this vantage point, the broad notion of human rights can be broken down into at least three distinct subsets. The first involves civil liberties and political rights as they are understood in the West, rights that, as Peter Berger accurately observes, "are plausible only to those who (whether by inheritance or adoption) stand within a specifically Western view of the world."[21] The verbal practice of states suggests that the denunciation of violations of these rights is dominated by tactical considerations, and the defense of their violation or nonexistence is largely perfunctory. In addition, there are few, if any, signs that states truly expect this situation to be otherwise.[22] The second subset consists of economic, social, and cultural rights. At the global level via the ILO, and regionally within the European Community, specific economic rights have been internationalized, and most states agree that the ends expressed by these economic rights are desirable. Beyond the European Community, however, ideological posturing along East-West and North-South lines dominates concerns regarding how best to achieve these rights.[23] As for social and cultural rights, nowhere are they seen to justify extensive international concern.[24]

The third subset relates to the physical security of the person, including freedom from torture and other forms of inhumane treatment or punishment. The normative status of these rights is both complex and anomalous. First, despite some disagreement about their precise content and more about whether any circumstances justify their violation, the minimal standards here are in fact more clearly understood and widely acknowledged than those for any other cluster of rights. Second, patterns of gross and systematic violations of these rights have occurred in recent years even as they were being

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codified, especially in parts of the developing world. Third, certain governments accused of such violations have gone to considerable lengths to deny or to excuse their behavior, thereby implicitly accepting the legitimacy of the very rights they have been abusing,[25] but others have largely ignored external criticism and condemnation. Fourth, although the international community has in some cases accepted the use of foreign assistance and even direct foreign intervention in the overthrow of governments that violate these rights grossly and systematically,[26] it has largely ignored other and similarly egregious violations. Different clusters of rights obviously enjoy differential normative status in the international community. None, however, seems to enjoy universal political legitimacy at this time.

What, then, can we conclude? International expressions of human rights represent a substantive expansion of the international normative order. This in itself alters the day-to-day conduct of international relations, if only because a particular factor now demands attention that in the past demanded neither as much nor the same kind. But *how* this order is established, how, that is to say, human rights have achieved international political legitimacy, and *which* human rights are legitimate for what range of states, does not show signs of a more fundamental transformation.

INSTITUTIONAL MECHANISMS

In international politics, no one has the authority to command; no one, in turn, has any generalized obligation to obey—this is the most consequential feature of the international community. Situational imperatives, however, can—and often do—moderate the behavior of states vis-à-vis each other, as in the case of classical power-balancing or contemporary nuclear deterrence. Beyond this minimal level of institutionalization, which reflects purely short-term, self-interest calculations, there is a broad range of state behavior that is subject to specific institutional arrangements, which have been termed international regimes. Regimes institutionalize both the normative and procedural expectations that states hold concerning collective behavior in a given issue area. Examples include the nineteenth century gold standard and the post-World War II Bretton Woods regime in the monetary field, or the nineteenth century Concert of Europe and the current nuclear nonproliferation regime in the security area.[27] Do the

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various international instruments in the area of human rights comprise international regimes? If so, what is their character? And do they show signs of institutional change that can be attributed to the concept of human rights?

From an institutional viewpoint, the most interesting international human rights instruments are in the area of civil and political rights. A brief summary follows of the salient features of the UN-based system and the European and Inter-American systems.

Although a Court of Human Rights exists under the European Convention, the vast majority of cases are dealt with through other means. The American Convention also provides for such a court, but as of 1982, only four states had accepted its jurisdiction. No such mechanism exists at the global level, nor is one provided for. Thus, with the partial exception of the European system, these instruments make possible the pursuit of human rights objectives primarily through political means. Although the three systems differ in several important respects, they also share important features, making it possible for us to discern consistent sets of state expectations.

The UN System

In its early drafts, the UN Covenant on Civil and Political Rights provided that the principal measure of implementation would be through interstate complaints. A Human Rights Committee, created under the Covenant and consisting of individuals elected by states, but serving in their personal capacities, were to receive these complaints. As a subsidiary measure, the draft provided for a procedure of state-reporting, with the Human Rights Committee reviewing the reports. In the final text, this order was reversed: state-reporting and Human Rights Committee review became the principal means of implementation, with adherence to the interstate complaint procedure coming through the additional accession to one of the Covenant's specific Articles, rather than following automatically upon its ratification. Furthermore, the right of individual petitioning, which had figured in the draft, was made subject to a separate protocol altogether. Ideological lines played a relatively minor role in producing this outcome; a more general assertion of state control prevailed.[28]

As of the end of 1981, five years after it came into force, only fourteen states had acceded to the interstate complaints procedure; all but two, Senegal and Sri Lanka, were Western; and the procedure

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had yet to be invoked. Twenty-seven states had acceded to the optional protocol allowing for individual petitionings, including several Latin American and African states, and the procedure was invoked thirty-three times between 1979 and 1982, twenty-one of which involved Uruguay, six for Canada, and six for Colombia.[29]

All states that have ratified the Covenant—thus far, fewer than half the member states of the UN—are required to submit reports to the Human Rights Committee detailing compliance with the Covenant's aims.[30] The first report is due within a year of entry into force, and subsequent reports are due at the request of the Committee, which reviews them and, in the process, questions state representatives. The Committee is entitled to ask for additional information and can, as in the case of Chile, reject the information submitted to it as being inadequate. The Committee then submits its own report to the UN Economic and Social Council, in which it may make "such general comments" as it considers appropriate about the issues it has reviewed. Until recently, no more universal instrument functioned effectively within the UN. Beginning in the 1970s, however, a statutory intergovernmental body, the Human Rights Commission of the Economic and Social Council, evolved means to investigate "particular situations which appear to reveal consistent patterns of gross and reliably attested violations of human rights requiring consideration by the Commission."[31] The procedures employed are cumbersome, the cases of specific individuals are not taken up, and very little information, other than the list of countries being investigated, is made public. The process, however, can be triggered by individual communications and by submissions from nongovernmental organizations. Human rights violations in a broad spectrum of countries have come under collective scrutiny by means of this procedure, and the scope of the Commission's concerns has increased progressively.[32]

The Regional Systems

Under the European Convention, an interstate complaints procedure is instituted automatically upon ratification. The right of individual petitioning and the jurisdiction of the Court require acceptance of optional clauses, but are now also in force among all members of the Council of Europe. The interstate procedure is used sparingly, however, and although individual petitions number in the thousands, only 2 percent are declared admissible for consideration

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by the Human Rights Commission. The remainder are ineligible because they have failed to exhaust domestic remedies, are not germane to the Convention, or have not made a prima facie case. The Commission is primarily a conciliation body, but where efforts toward friendly settlement fail, it can refer its opinions to a Council of Ministers, which has executive authority, or bring the case to the Court. Very few cases that the Commission has dealt with have advanced to either, but of those contentious cases that have, the Council, by a small margin, has considered more than the Court.[33]

The American Convention, unlike its European counterpart, has a mandatory provision for the right of individual petitioning, not only *by* individuals, but also on their behalf. Here it is the interstate complaints procedure that is optional, and it has been accepted by only three states. The Inter-American Commission on Human Rights was created by the Organization of American States in 1959, ten years before the Convention came into effect. Declared a principal organ of the OAS in 1965, the Commission has statutory authority beyond both the Convention and the states that have ratified it.[34] The Permanent Council of the OAS selects individuals for the Commission, and these Commission members serve in their personal capacities. The Commission receives and investigates complaints, questions governments, makes on-site visits, where permitted, to scenes of alleged violations, and issues a variety of reports, which, by the standards of international organizations, are unusually detailed and pointed.[35] Since the mid-1970s, with critical support from the United States, Commission activities have grown in magnitude and its reports have gained increasing attention in OAS General Assembly debates.

An Analytical Reprise

I began this section by asking whether these three international human rights instruments constitute international regimes, what their character might be if they do, and whether they differ from other regimes in ways that can be specifically attributed to the concept of human rights. My answer to the first question is that there certainly appear to exist consistent sets of normative and procedural expectations on the part of states by virtue of which these arrangements may be termed regimes, though they are not terribly strong ones. In each case, primary responsibility for implementation rests at the national level, interstate complaints are avoided whether they are

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automatic or optional, and with the partial exception of the West European system, collective investigation, review, and publicity are the major international mechanisms employed. Thus, these regimes appear to be designed to produce transparency in the intentions, attitudes, and behavior of states. Their purpose is both to embarrass perpetrators and to make it more difficult for others not to act in the face of at least some violations. Transparency rules out ignorance as an excuse for inaction all around. And where international self-help measures are available, transparency may make it necessary for other governments at a minimum to account for their inaction.[36]

This much the regimes have in common. They are also different, and the differences reflect the political frameworks of each. The West European regime attempts to resolve specific grievances by specific individuals, and has the greatest degree of autonomy. The global regime takes up gross and consistent patterns of violations, and is by far the most hesitant and constrained. The American regime falls between the two on both counts, and has advanced to its present state in no small measure due to the influence of the United States.

In sum, what is unusual about these regimes is that they exist in an area where none existed in the past. Their institutional design, however, reflects familiar terrain. For example, the global human rights regime is not unlike the global nuclear nonproliferation regime in design. In both, the locus of concern is domestic: violating human rights in the one case, and diverting nuclear material from peaceful to weapons purposes in the other. Both regimes are designed to produce transparency in state intentions, attitudes, and behavior; both do so by generating and disseminating information; and neither has any enforcement power. One major difference is that the nonproliferation regime has an independent and extensive monitoring capacity, whereas the human rights regime does not. This difference *is* attributable to differences in the two issue areas, but not of a sort that signals institutional change: the nonproliferation regime has the "advantages" that states view it as dealing with a more direct threat to international peace and security, that the possibility of reciprocal parallel measures by others acts as a more effective deterrent to would-be violators, and that it was established by superpower condominium to begin with. Lacking these traditional instruments of securing compliance, human rights regime cannot help but be weaker.

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SOCIAL FRAMEWORKS

Theorists of the international legal order have used the term "revolutionary" when describing international human rights law, in the sense that it is said to differ radically from traditional interstate law.

> The new law buried the old dogma that the individual is not a "subject" of international politics and law and that a government's behavior toward its own nationals is a matter of domestic, not international concern. It penetrated the veil of sovereignty. It removed the exclusive identification of an individual with his government. It gave the individual a part in international politics and rights in international law, independently of his government. It also gave the individual protectors other than his government, indeed protectors and remedies against his government.[37]

To some, these developments amount to nothing less than the emergence of a *jus gentium,* transcending the *jus inter gentes* characteristic of the past three centuries.[38] This neo-medievalist vision is reinforced by the resurgence of naturalism, though admittedly a "new" naturalism, as a basis for solidarist claims in the international community. My concern is to what extent a corresponding tendency may be transforming the international polity, away from a society of states, toward a broader social framework for ordering the relations among the world's people, a framework that some have called "world society."[39]

The international polity *is* changing, and global political processes now exist that can no longer be accounted for strictly in terms of interstate politics. The agenda of international politics has broadened well beyond its traditional scope, the world economy increasingly functions as an integrated whole, national policy spaces are interpenetrated in numerous sectors, and a great variety of actors, governmental as well as nongovernmental, operate across national frontiers. The internationalization of human rights concerns is part of this broader process. Great care must be taken, however, not to exaggerate the extent to which "world" politics, as opposed to interstate politics, represents either a decline in the significance of states or the emergence of an integrated world society.

The human rights area illustrates well the need for caution. As Henkin himself points out,[40] human rights represent the claims of individuals *on their own society,* not on some other, least of all, we might add, on a cosmopolitan society. Moreover, international hu-

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man rights instruments are designed not to provide human rights or to enforce human rights provisions, but to nudge states into permitting their vindication. To do this may well require that many states become stronger, because only an economically strong state can generate the resources and provide the opportunities to fulfill stipulated economic rights, and only a politically strong state can permit institutionalized opposition, social protest, and individual freedoms.

Lastly, it is as difficult to discern the political ontology of the new naturalism as it was the old, notwithstanding sociobiological theories to the contrary.[41] The natural species is not a political agency, and patterns of ecological and economic interdependency are not themselves constitutive of international political order. In sum, while further transformation of the society of states surely can be assumed from its appearance in international politics in the first place, to date the notion of a world society constitutes not a framework within which moral claims can be met but a vocabulary within which they may be articulated.[42]

* * *

The individual in international relations, in the form of the prince, first helped to shape consciousness of the emergence of territorially distinct and mutually exclusive states, comprising, rather than being subordinated to, a broader community. The reemergence of the individual in international relations, in the form of human rights, signifies how much has changed in this community. Our brief survey has suggested, however, that there also remains a good deal of continuity.

The international normative order has expanded to incorporate human rights, but the factors that determine which human rights enjoy international legitimacy and how they come to achieve this status are little changed. Likewise, human rights regimes now exist, whereas none existed in the past, yet their design is consistent with that of regimes in analogous domains. And while the process of internationalizing human rights both reflects and contributes to greater complexity in the social framework of international politics, it leads neither to a lesser role for the state nor to a more integrated world society.

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We are therefore led to two conclusions, which will please neither the theoretician impressed by the revolutionary potential of human rights law nor the practitioner dedicated to its vindication. In theoretical terms, the human rights field exhibits a combination of discontinuity and continuity that might be called rule-governed change. This mode of change has been identified in other nontraditional international issue areas as well.[43] It means simply this: that a new area of international activity exists and concerns international actors differentiates the present from the past, and to some extent alters day-to-day international politics. At the same time, how international actors respond to this new issue area and the underlying calculus of decision that their responses reflect continues to be shaped by factors and forces familiar to the student of international politics. The final outcome will reflect as-yet unforeseen second and third order consequences of present acts and therefore cannot be easily predicted. For the moment, however, it remains closer to a system reproducing itself within a new domain rather than one being transformed by it. If this is so, there follows a practical implication as well. The human rights struggle cannot count on benefiting from an international political transformation that it is itself helping to create. Where such a transformation is already under way, as in Western Europe, the cause of human rights is well served by it. Elsewhere, the human rights struggle is condemned to work within a system that remains fundamentally inhospitable to the kinds of claims and challenges it represents.

ENDNOTES

I acknowledge with thanks helpful comments and suggestions from Stephen R. Graubard, Ernst B. Haas, Louis Henkin, and Oscar Schachter, as well as the research assistance of Jay Speakman.

[1]These include the various conventions and regulations issued by the International Labour Organization, as well as the UN treaty instruments relating to genocide, war crimes and crimes against humanity, apartheid, racial discrimination, slavery, women, children, refugees, and stateless persons.

[2]Louis Henkin, "Introduction," in *The International Bill of Rights,* edited by Henkin (New York: Columbia University Press, 1981), p. 7. See also his more extensive historical survey in *The Rights of Man Today* (Boulder, Colorado: Westview Press, 1978).

[3]Stanley Hoffmann, *Duties Beyond Borders* (Syracuse: Syracuse University Press, 1981).

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[4]For an excellent discussion of these issues in the context of international relations, see R.J. Vincent, "Western Conceptions of a Universal Moral Order," *British Journal of International Studies* 4 (April 1978).

[5]Patricia M. Derian, "Human Rights and International Law," *Department of State Bulletin* 81 (January 1981): 23.

[6]This definition is drawn from Jürgen Habermas, the chapter "Legitimation Problems in the Modern State," in *Communication and the Evolution of Society* (Boston: Beacon Press, 1979).

[7]Kenneth N. Waltz, *Theory of International Politics* (Reading, Mass.: Addison-Wesley, 1979), p. 200.

[8]Robert W. Cox, "Gramsci, Hegemony, and International Relations: An Essay in Method," *Millenium: Journal of International Studies* (forthcoming).

[9]James Frederick Green, "Changing Approaches to Human Rights: The United Nations, 1954 and 1974," *Texas International Law Journal* 12 (Spring/Summer 1977).

[10]Ibid. The right to self-determination, for example, heads both UN covenants.

[11]Asmarom Legesse, "Human Rights in African Political Culture," in *The Moral Imperatives of Human Rights,* edited by Kenneth W. Thompson (Washington, D.C.: University Press of America, 1980), p. 124.

[12]Richard K. Ashley, "The Hegemony of Hegemony: Realism, Political Autonomy, and the Epistemology of System Change in the International Political Economy," draft manuscript, January 1982.

[13]Henkin, "Introduction," p. 12.

[14]Myres S. McDougal, Harold Lasswell, and Lung-chu Chen, *Human Rights and World Public Order* (New Haven: Yale University Press, 1980), p. xvii.

[15]Henkin, "Introduction," p. 2.

[16]Ibid., p. 12; cf. Vincent, "Western Conceptions."

[17]Henkin, *The Rights of Man Today,* p. 28.

[18]A. Glenn Mower, Jr., in "Human Rights in Western Europe: Progress and Problems," *International Affairs* 52 (April 1976), points out that governments in Western Europe have become increasingly cooperative in helping to process complaints against them.

[19]For good overviews, see Bryce Wood, "Human Rights and the Inter-American System," in *The Future of the Inter-American System,* edited by Tom J. Farer (New York: Praeger, 1979), and Wood, "Human Rights Issues in Latin America," in Jorge Dominguez et al. *Enhancing Global Human Rights* (New York: McGraw-Hill, 1979).

[20]The basic North-South and East-West differences, as exhibited by verbal behavior in the UN General Assembly, are outlined by Green, "Changing Approaches to Human Rights," and Hoffmann, *Duties Beyond Borders,* chapter 3.

[21]Peter L. Berger, "Are Human Rights Universal?" *Commentary* 64 (September 1977): 62.

[22]The pervasive hypocrisy and cynicism governing these practices are effectively documented by Hoffmann in *Duties Beyond Borders,* chapter 3. A recent review, including the practices of the Reagan Administration, may be found in Alan Tonelson, "Human Rights: The Bias We Need," *Foreign Policy* 49 (Winter 1982-83).

[23]Long-standing Soviet criticisms of unemployment in the West as a denial of the right to work, and Western countercharges of forced labor in the Soviet Union, are a fairly typical illustration of the former. And the current debate between industrialized and developing countries, of whether the right to development is a

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right the North owes to the South or one Southern governments owe to individuals within their countries, illustrates the latter.

[24]This is true even of the West European region, where the European Social Charter, signed in 1961 and in force since 1964, shows little sign of life.

[25]As a rule, Latin American governments tend to exhibit this posture.

[26]The list of recent cases would include the Central African Empire, Nicaragua, Uganda, and perhaps Equatorial Guinea.

[27]For theoretical and empirical explorations of the concept of international regimes, see *International Regimes,* edited by Stephen D. Krasner (Ithaca: Cornell University Press, 1983), first published as a special issue of *International Organization* 36 (Spring 1982).

[28]Green, in "Changing Approaches to Human Rights," briefly describes how these changes came about. For descriptions of the current provision, see A.H. Robertson, "The Implementation System: International Measures," in *The International Bill of Rights;* and John Humphrey, "The Implementation of International Human Rights Law," *New York Law School Review* 24 (1) (1978).

[29]United Nations, General Assembly, *Report of the Human Rights Commission,* Official Records: 34th through 37th Sessions, Supplement 40 (A/34-37/40).

[30]The provisions of the Covenant on Civil and Political Rights call for the vindication of (1) life, physical liberty, and integrity of the person; (2) freedom of movement and residence; (3) privacy, family, and personal dignity; (4) freedom of conscience, thought, expression, and assembly; and (5) equality and nondiscrimination. The text is reprinted in Henkin, *The International Bill of Rights.*

[31]This wording is contained in the enabling resolution of the Economic and Social Council, Resolution 1503 (1970). For its origins and background, see Frederic L. Kirgis, Jr., *International Organizations in their Legal Setting* (St. Paul: West Publishing Co., 1977), chapter 6, section 2.D.

[32]For a comprehensive description of the evolving practice under ECOSOC Resolution 1503, consult T.J.M. Zuidwijk, *Petitioning the UN: A Study in Human Rights* (New York: St. Martin's Press, 1982). Among the countries whose practices have been considered by means of this procedure are Argentina, Bolivia, Burma, Chile, Equatorial Guinea, Ethiopia, Greece, Indonesia, Israel, Malawi, Nicaragua, Paraguay, South Korea, South Africa, Uganda, Uruguay, and the USSR.

[33]Mower, "Human Rights in Western Europe," and Kirgis, *International Organizations,* chapter 6, section 4.

[34]Wood, "Human Rights and the Inter-American System," and Kirgis, ibid., chapter 6, section 3. At one point, there was some question of whether the status of the IACHR under the Convention would supercede its OAS statutory basis, but it has not. Had it done so, the Commission of course would have had no authority to investigate violations in nonratifying countries.

[35]"They name individuals, detail methods of torture, quote from tape-recorded interviews with political prisoners, and finally, they make certain types of judgments about the performance of governments." Wood, "Human Rights Issues in Latin America," p. 175.

[36]For example, provisions written into US foreign security assistance legislation call for the president to certify that the recipient country either meets certain human rights standards or is making good progress toward their fulfillment.

[37]Henkin, "Introduction" (fn. 2), p. 6.

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[38]Humphrey, "The Implementation of International Human Rights Law." Cf. Rosalyn Higgins, "Conceptual Thinking about the Individual in International Law," *New York Law School Review* 24 (1) (1978). Higgins goes on to say that "Power, to be sure, rests still to a substantial degree with sovereign states: it is within their power, for the moment, to block the access of the individual to certain international tribunals and to continue to assert the old rule of nationality of claims. But the very notion of international law is not predicated upon this assumption, and the international legal system survives conceptually even were this to change" (p. 15).

[39]Hedley Bull in *The Anarchical Society* (New York: Columbia University Press, 1978) examines this hypothesis extensively and critically.

[40]Henkin, "Introduction" (fn. 6), p. 7.

[41]The various bases of the new naturalism are mentioned in passing by Vincent in "Western Conceptions of a Universal Moral Order." Ernst Haas in "Words Can Hurt You; or Who Said What to Whom about Regimes," *International Regimes,* explores how helpful the physical and biological variants of this view are as guides to international regime change, and finds them wanting in efficacy. For a highly sophisticated, though no less flawed, economic variant, which bases claims for international distributive justice on the extent of economic interdependence, see Charles R. Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979).

[42]This paraphrases the conclusion reached by Vincent in "Western Conceptions."

[43]For example, global responses to ecological problems exhibit similar characteristics, as I have sought to show in my paper "On the Problem of 'The Global Problematique,' " *Alternatives* 5 (January 1980).

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Merle Goldman

Human Rights in the People's Republic of China

CONCERN FOR HUMAN RIGHTS is neither alien to China nor merely a Western import. Its roots are deep in Chinese history and tradition. The Chinese conception of human rights, however, differs in some respects from that of the West. It did not develop from theories of natural law such as those associated with the Judaeo-Christian tradition, nor did it put much emphasis on individualism and legal protection. Nevertheless, it has some aspects that overlap with the Western view, for example, the belief that a human being is entitled to what he needs for material survival and human dignity. Confucianism held as a fundamental tenet the government's responsibility to provide for the basic economic needs of the population, as does the People's Republic of China (PRC) today, which has improved public health, increased life expectancy, expanded educational opportunities, and raised rural living standards significantly.

As was the West, Confucianism was also concerned with restraining political power, but unlike the West, it justified a loyal opposition ideologically rather than guaranteeing it legally. And although China does not have a tradition of individual liberties and legal rights, it does have one of humane concern, which found its expression in the Confucian literati's criticism of the government for unfair treatment of the population and the abuse of power. Without directly challenging the authoritarian nature of the Confucian system, individuals and groups throughout Chinese history have criticized political oppression and sought to curb despotic rulers, often risking death to protest against government misdeeds and to propose reforms. Moreover,

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Confucianism connected the provision of basic economic needs with the expression of political criticism. If a ruling group oppressed the peasants and made it difficult for them to provide for their livelihood, then it was the moral responsibility of the literati to criticize the government for not fulfilling its functions. Beyond this, the Confucian system had institutions, such as the Censorate, to investigate and criticize erring officials and even erring emperors. In addition, independent academies arose in the beginning of the eleventh century that espoused views divergent from the prevailing Confucian orthodoxy. Dissent in China, however, did not present an alternative to Confucianism, but presented differing interpretations within the Confucian framework.

Since China, unlike the West, did not have laws or institutions to protect critics or dissidents, censors could be purged for expressing criticism that displeased an emperor, and an academy could be closed down for advocating views that the emperor disagreed with. Nevertheless, Chinese history has honored dedicated, courageous individuals and groups who protested uncompromisingly against arbitrary rule. Western notions of human rights began to influence the Chinese conception beginning in the late nineteenth century, when several generations of China's educated elite were exposed to Western democratic and legal thought. Under the influence of these ideas, modern activists sought to base their traditional responsibility to protest against political oppression and unfair treatment on guaranteed legal rights, and on the rights of freedom of speech, publication, and assembly, so that they could criticize with impunity.

As in certain periods of Chinese history, principled dissent existed side-by-side with despotism,[1] so too does it exist in the PRC. Despite the totalitarian nature of the role of Mao Zedong and the Chinese Communist party, the tradition of criticism by the literati is still alive today in the tiny segment of the articulate population, primarily the intellectuals and educated youth, who continue to protest against injustice. Like their predecessors, most of them are loyal to the prevailing system, but object to official abuses that prevent the system from achieving its ideals. As in times gone by, criticism is expressed primarily through official channels. As the emperor opened the *yanlu,* the avenues of communication, to allow literati to express disagreement on policy matters, similarly Mao Zedong and the Chinese Communist party at various times have urged intellectuals to ques-

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tion and criticize official abuses in order to rectify the system. But these interludes of criticism also owed much to the Party's need for the cooperation of intellectuals in building a modern society. The Party's policy toward intellectuals, therefore, has been a contradictory one, that of imposing its ideology on intellectuals more comprehensively and intensively than Confucianism was imposed on the literati, while periodically granting them a degree of autonomy. In periods of economic crisis particularly, the Party has eased its controls in order to gain the help of intellectuals in solving its problems. At these times, criticism and dissent were expressed under official auspices, most of the time in Party-controlled newspapers, journals, and in the creative arts. Even the spontaneous grassroots protests that used unofficial pamphlets and wall posters, as in the spring of 1957 and in 1978-79, were officially sanctioned.

The dissidents in the PRC held diverse views and spoke in different voices. Most were Marxist-Leninists, but they were also influenced by democratic Western thought as well as by their own traditions. Within this general stance there was wide variation: some stressed traditional aspects of Marxism, others, radical aspects of Maoism; some emphasized Western-style professionalism, others, intellectual pluralism. Though perhaps more courageous and sensitive than their compatriots, most dissidents were not motivated by ideals alone, but also by personal ambition and a quest for power. Intrigue, factionalism, rivalries, and suspicions were therefore no less prevalent among them than in the community at large. Where they did meet was in their disagreement, at certain times, with the way the Party or Mao, or both, were carrying out Marxism-Leninism. They pointed out the contradictions between ideology and Party policies. Most sought change, however, not by destroying the political order, but through it. Thus, like the literati, they were not an organized political opposition that sought to replace those in power, but dissidents who expressed views different from the leadership and critical of it. Their purpose was to influence both the leaders and the opinion of the educated elite in order to change policies they disagreed with. They were without legal protection, but were in effect loyal opposition working for reform within the system.

Although the Party opened itself up to criticism and set the limits within which—at least in the beginning—critics could express themselves, it could not fully control the response. Almost inevitably, the

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limits were transgressed. In periods of relative relaxation, the Party allowed more self-expression in one's own work, but this led in some cases to demands for more self-expression on political issues. The Party allowed criticism of individual officials and individual abuses to improve bureaucratic efficiency, but invariably some critics went beyond criticism of individual bureaucrats to criticize the political system itself. Since there were no laws to protect the activists, the interludes of criticism were inherently short, sporadic, and extremely hazardous to the participants. The Party cracked down with thought reform campaigns, denunciations by the masses, labor reform, imprisonment, and sometimes death. Like the emperors of old, the Party closed off the *yanlu,* but the repression in the PRC of those who dared to dissent affected more people proportionately and was on a more violent scale than the repression of critical literati in traditional times.

UNOFFICIAL DISSENT

In addition to intellectuals, students also have protested against unjust conditions and abusive officials, from the Song Dynasty (960-1279) on. On May 4, 1919, student demonstrations at Beijing University against a warlord government that had made concessions to the Western powers spread to major cities and universities throughout China. The May Fourth Movement also accelerated the infusion into China of a wide variety of Western ideas. The chaotic political nature of China during the early decades of the twentieth century made possible the spread of these ideas and a free exchange of views. Even those who were committed to the communist movement embraced the May Fourth spirit of cultural pluralism, public debate, and intellectual autonomy. The movement marked the emergence of an intellectually independent and politically articulate student, professional, and intellectual community. Writers in the 1920s and 1930s assumed the role of makers of public opinion and spokesmen of the people to the state. After the Communist party came to power in 1949 and tightened its control over all aspects of Chinese life, it became increasingly difficult to maintain the May Fourth spirit. Nevertheless, when the Party periodically relaxed its grip and called for criticism, this spirit reasserted itself in protest against government

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misrule and repression, and in works of intellectual and creative vitality.

The Hundred Flowers

The first protest movement in the PRC, the Hundred Flowers, occurred in the spring of 1957. It emerged from a period of relaxation that began in 1956, in which the Party sought the intellectuals' cooperation in correcting the economic difficulties brought on by its high-speed drive toward industrialization and agricultural collectivization. Mao also encouraged intellectuals to criticize officials to improve the workings of the bureaucracy. At this time, China was an ally of the Soviet Union, and the relaxation in China paralleled the Soviet thaw after Stalin's death, especially the criticism of dogmatism and oppressive controls that followed Khrushchev's 1956 speech denouncing Stalin. At first the criticism generally stayed within the bounds set by the Party; that is, bureaucratic abuses were criticized, but not the bureaucracy itself. In an effort to accelerate the rectification of the bureaucracy, Mao gave a speech entitled "On the Correct Handling of Contradictions Among the People," in which he theorized that "nonantagonistic" contradictions between the leaders and the led can exist in a communist society and should be openly criticized. With such encouragement, the criticism that intellectuals had expressed circumspectly in the official press, Beijing University students trumpeted in the spring of 1957. Their hundred flowers blossomed forth in a wide variety of views, expressed in wall posters, the most effective means for the powerless to get a public hearing in a society where the government controls all means of communication, from newspapers to operas.

Like their May Fourth predecessors, the Beijing University students went to other universities in other cities and urged fellow students to follow suit. The official newspapers for the intellectuals reported on these protests, thus spreading them further. By means of a myriad of pamphlets and wall posters, the students criticized the Party's domination of the university and the politicalization of academic work. Some demanded the implementation of the rights of free speech and election that were guaranteed in the PRC Constitution of 1954, and a small number demanded a system of laws that would protect the right to criticize and speak out. A few even went so far as to condemn the Party's monopoly of political power. But most called

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for little more than greater independence from Party control. Their protests revealed that, although they had been educated and indoctrinated by the Communist regime, they had also been influenced by Western ideas.

The momentum developed by the Hundred Flowers—the spread of criticism, the coalescence of independent groups, the printing of unofficial magazines, and the demonstrations against the Party authority—provoked the Party to launch a counterattack in June 1957 against the participants, whom it branded as "rightists." Since all Chinese society is organized into units, each unit, even those with few participants in the Hundred Flowers, was ordered to select a prescribed quota of rightists, usually 5 percent of the unit, to be sent to the countryside and to factories for labor reform, some for three to five years, others, for over twenty. Their colleagues, their friends, and even family members were forced to denounce them. The 400,000 to 700,000 intellectuals and students purged—an important segment of the educated Westernized elite—were thereby lost to China's modernization.

THE CULTURAL REVOLUTION

In less than ten years, the government embarked on the Cultural Revolution, which was soon to become a campaign of repression even more massive and violent than the antirightist campaign. It lasted for ten years, from 1966 to 1976. Millions of intellectuals, students, officials, and skilled workers were persecuted in what the post-Mao regime later described as "a disaster without precedent in five thousand years of Chinese culture."[2] Estimates are that 100 million people were affected, and close to one million lost their lives.[3] It is yet another example in Chinese history of tyranny and dissent existing side-by-side. In the early stages of the Cultural Revolution, Mao summoned the youth, the Red Guards, to criticize the Party's political and educational elite, whom he labeled a new privileged class as autocratic and oppressive as the old. He encouraged the Red Guard to "rebel against authority" and "go against the tide," and they responded enthusiastically, believing—naively—that their rebellious acts would produce a more democratic, more egalitarian society. But as the Cultural Revolution evolved into a power struggle between Mao and the Party bureaucracy, these inexperienced youths were

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manipulated by various factions in a fierce struggle that brought China close to a state of anarchy, before which Mao retreated, using the army to suppress the Red Guards. Nevertheless, because of the chaotic conditions of the late 1960s, the Red Guards were able to express their sense of betrayal in wall posters and unofficial pamphlets. The most articulate group to emerge during this period was an alliance of radical Red Guard groups in Hunan, known as Sheng-wu-lian, which charged in its pamphlets that, although officials had been purged, the bureaucratic machine and military establishment remained to perpetuate the privileged system that was suppressing the masses. Sheng-wu-lian wanted a system based not on the Leninist party dictatorship, but on direct political participation of the masses. Its members expressed disillusionment with Mao for aborting the Shanghai Commune, established briefly in 1967, and for backing down on his antibureaucratic attacks. Sheng-wu-lian was almost immediately disbanded and its leaders taken into custody.

Another youthful protest occurred that called for a democratic rather than a radical solution to China's problems. In 1974 a group of disaffected students, known as Li Yi Zhe, charged, in a poster put up in Guangzhou, that China had become a lawless society not only because of the Cultural Revolution, but because of the political system itself.[4] Although the Constitution guaranteed democracy and protection against arbitrary attack, torture, and interrogation, Li Yi Zhe asserted, these rights had not been upheld because there was no consistent, regularized system of laws and policies. Rather, Mao's words became the law, so the law could be interpreted as one wished, even to putting one's opponents to death. To stop such abuses, Li Yi Zhe called for legal guarantees to protect democratic and individual rights, as did their human rights counterparts in the Soviet Union.

As was true of most protests, this one had some official sanction. Although the poster was eventually torn down, and the Li Yi Zhe group was arrested and denounced, its leader, Li Zhengtian, was allowed to debate his critics at mass meetings, thereby reaching a larger audience than the poster alone could do. Perhaps he was permitted to express his views in this way because of his denunciation of Mao's policies and the Gang of Four—Jiang Qing, Mao's wife, and her colleagues, who had continued to persecute defiant officials and intellectuals—which overlapped with the views of Guangdong offi-

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cials (the province in which Guangzhou was located) that could not be expressed publicly. Zhao Ziyang, who was later to become prime minister under the auspices of Deng Xiaoping, was the head of Guangdong province at this time and may have allowed publicity to be given to the poster in order to build up opposition to the Gang of Four.

These youthful protests climaxed in a partly orchestrated, partly spontaneous demonstration at Tiananmen Square in the center of Beijing on April 5, 1976. In the annual ceremony commemorating the dead, several hundred thousand protestors paid their respects to Zhou Enlai, whose death earlier that year had gone virtually unmarked, because of the Gang of Four's control of the media. Their honoring of Zhou implicitly supported his and Deng's pragmatic policies, and attacked the radical policies of the Gang of Four and even Mao. Using the traditional means of poetry to express their protest, a number of poems compared Mao to China's first emperor, the despotic Shi Huang of the Qin Dynasty,[5] and others called for an end to passive acquiescence. The demonstration was quickly and brutally suppressed by the police and the public security forces. Mao and the Gang of Four held Deng responsible, and he was dismissed from all his positions. Unofficial protest was once again pushed underground.

THE DEMOCRATIC MOVEMENT, 1978-79

The Democratic Movement in 1978-79 welled up spontaneously after Mao's death, as the Party relaxed controls to gain the cooperation of intellectuals in repairing the damage of the Cultural Revolution. Since the activists in the Movement were attacking Mao's policies and his followers, Deng, who had returned to power in 1977, used it to help oust his opponents and consolidate his position in the Politburo. Like Mao, Deng used the spontaneous demonstrations in the streets as leverage to influence decisions in the Politburo. And just as Mao had used genuine grievances against Party privilege to fight an intraparty struggle in the Cultural Revolution, so Deng used them against Mao's policies in his own intraparty struggle in the post-Mao era. He also allowed the seething underground protest to explode aboveground in late 1978, because Mao had not yet been officially criticized and, perhaps most important, because it expressed the

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widespread and deep-seated revulsion of the officials, as well as non-officials, who had been victims of Mao's use of terror and chaos.

Deng also sought to redress past grievances. In November 1978, the Party declared that the demonstration at Tiananmen had been a "revolutionary," not a "reactionary," movement. The hundreds of thousands of writers, thinkers, teachers, artists, bureaucrats, managers, and workers released from China's prisons and reform camps included not only victims of the Cultural Revolution, but victims of previous campaigns as well, including the antirightist campaign. Some democratic procedures were allowed at the lowest level—in the factory, commune, and district—for election to people's congresses. Intellectuals were called vital to China's modernization by party officials, who promised to operate in the future in an orderly manner, without the arbitrary violent shifts and mass campaigns of the Maoist era. Early in 1979, an editorial in the Party's official newspaper, *People's Daily,* encouraged the expression of a variety of views by saying that "a range of opinion from people is good for revolution. . . . When people are free to speak, it means the Party and government have strength and confidence."[6] Whatever the reason for the relaxation—whether it was a political ploy or a genuine belief in the need for a more open society, or both—Deng and his supporters in late 1978 and early 1979 were willing to open up the *yanlu.*

Because the Party initially did not demarcate the paths the communication was to take, ordinary citizens enjoyed more freedom than at any other time in the history of the PRC; thus the Democratic Movement lasted much longer than earlier protests had, continuing, with some interruptions, for almost a year, though its heyday was from the fall of 1978 to the spring of 1979. Some of its activists had connections with high officials, and this may have shielded them for awhile. In contrast to previous protests, which took place primarily around urban university campuses, the Democratic Movement was visible nationwide and even had contacts in the countryside.

Whether because of structural similarities or conscious copying, or both, the Movement resembled the post-Stalinist Soviet dissident movement. As their Soviet counterparts had based their actions on the Soviet Constitution, so the Chinese activists drew sanction from the PRC Constitution, since it continued to guarantee freedom of speech, publication, and assembly throughout its four revisions. Although the Party generally ignored these rights, the activists used

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them to give legitimacy to their actions. They circulated pamphlets, stories, poems, petitions, and documents hand-to-hand, too. Unlike the Soviet dissidents, however, they were able for a brief period to put up posters and sell publications openly to passers-by, and some of their public protest was unequivocally critical of the Party. A huge wall in the center of Beijing, called Democracy Wall, became the main site for placing posters, and large crowds congregated there to air their views and mobilize support. Soon other walls in Beijing and in other cities were used for the same purpose. Although the active participants were small in number—several hundred to several thousand—they expressed the widespread, general discontent felt by a large segment of the population in the aftermath of the Cultural Revolution.

Unlike the Soviet dissidents, whose ranks included eminent intellectuals, the activists were led by unknown workers, clerks, teachers, and students, many of whom were children of middle-level and upper-level intellectuals and officials, who, had it not been for the Cultural Revolution, would have been intellectuals and officials themselves. Most were former Red Guards who had learned to challenge authority during the Cultural Revolution. Mao's clampdown on the chaos provoked by the Red Guards had sent some to prison and others to work in factories and in the countryside. Too old to be accommodated in the system of higher education, which had been done away with during the Cultural Revolution and restored after Mao's death, they were left an alienated generation, without youth or education, disinherited and betrayed. They took to the streets to voice their anger and disillusionment with the political practices in which they had been reared. Most vented their personal grievances against arbitrary treatment, miscarriage of justice, persecution, and arrest. Some continued to criticize the Party bureaucracy as a privileged, oppressive class. Others demanded a degree of cultural and political freedom, as did the activists of the Hundred Flowers. But because the latter had been persecuted, there was much greater stress on the need for institutional and legal procedures, both to guarantee the freedom to speak and to prevent the lawlessness that had characterized the antirightist campaign and the Cultural Revolution. The call was not for moderation and self-restraint in the leadership, as in the Hundred Flowers, but for laws to protect civil liberties and to prevent arbitrary treatment. In expressing dissenting and alternative

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views, they cited Christ, Montesquieu, Tito, and the Euro-Communists, as well as Mencius and principled Confucian critics—yet all within a Marxist context, perhaps because they knew no other so well. Besides Mao, most had read Marx, Engels, Lenin, and Stalin. Some rejected Lenin's one-party state and Stalin's violence, but most professed faith in Marxism, believing that the followers of Marx had corrupted it and turned it into a rigid dogma. Most called for a system of "socialist legality," where there would be democratic elections, the right of recall, rule of law, cultural freedom, and openness to the outside world.

During this period, a score of makeshift, unofficial journals suddenly appeared all over the country,[7] staffed by young workers and students, many of them ex-Red Guards in their late twenties and early thirties, who were experienced at making posters and pamphlets. Most of those who worked on these journals believed that the Deng leadership would institute the reforms they sought, since their demands for pragmatic economic policies, the dismissal of Mao's associates from the political hierarchy, and the public denunciation of Mao coincided with Deng's policies. They were also well aware that they were able to organize and express these demands publicly only because of the tolerance of Deng and his associates.

Like Deng, most sought reform within the prevailing political-economic structure. In the most influential of these journals, *April 5th Forum*, named after the date of the Tiananmen demonstration, they asserted, in virtually Confucian terms, that their purpose was "not to tear down the fabric of society, but to repair it."[8] But their means differed from Deng's: they sought to loosen the Party's control over economic and political life, whereas he and his associates sought to reestablish it. They believed that a system of worker participation in economic management, such as practiced in Yugoslavia, would lead to a democratic society within a socialist system, one journal going so far as to describe Yugoslavia as being "in compliance with Marx's great teachings—[having] liberty, democracy, unity, and stability."[9] Others praised Yugoslavia for establishing worker self-management and abolishing party administration at the grassroots level and in factories. Few knew that Tito had repressed dissent ruthlessly.

One journal recommended an eclectic approach: in addition to Marxism, it lauded Rousseau's theory of the general will, Sun Yat-sen's principles on democracy, and the New Testament's teaching of

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universal love. An article entitled "On Human Rights" defined these very much as the Confucian responsibility to criticize the flaws of the rulers and suggest remedies; but, the article added, this moral responsibility needed to be strengthened by laws to make it a right, and pointed out that a government is "less inclined toward wrongdoing and corruption" when there is a right to dissent. There was, it said, more freedom of speech in ancient China than at present: "these rights exist in the Constitution but not in actual life."[10]

Unlike the victims of repression in the Soviet Union, who were sent to the Gulag for indefinite periods, those of the antirightist campaign and the Cultural Revolution were imprisoned or sent to labor reform for a limited period only. When they returned, a number of them picked up where they had left off. One, Wang Xizhe, a member of the Li Yi Zhe poster group, who was arrested and freed, then rearrested and freed once again, all over a period of eleven years, resumed writing for one of the journals. He urged Deng to liberalize China the way Khrushchev had liberalized the Soviet Union, to carry out economic reforms, and to stress socialist legality and civil rights. He hoped, however, that Deng would not make Khrushchev's mistake of reforming the system in part, but not touching the basic bureaucratic structure that Wang believed was the source of the autocracy and dogmatism that had hindered China's development.[11] Wang's colleague, Yi Ming, blamed the terror of the Cultural Revolution not only on Mao and the Gang of Four, but on all the Party leadership, including Deng and his associates, because they had also suppressed democracy. He believed that the people had supported the Party in the thirties and the forties because it was an "honest, courageous fighting force,"[12] but that after the antirightist campaign, it had suppressed all criticism and was overcome by bureaucratism. The articles in the unofficial journals stressed repeatedly—as Mao had in the Cultural Revolution—that the Party had engendered within itself a new ruling class that used its political power to oppress others and to obtain special privileges. Thus they saw the horrors of the Cultural Revolution not as an aberration, but as evolving from the Chinese communist system.

The Democratic Movement was a fragmented, diffuse coalition. Although most hoped that Deng's reforms would bring more democracy and a system of laws within the socialist framework, a small, more militant wing believed this was impossible. The most daring

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member of this group, Wei Jingsheng, advocated a multiparty system and believed that a complete overhaul of the socialist system was necessary for democracy to be instituted and for economic improvement to occur. Wei's poster, "The Fifth Modernization," put up on Democracy Wall in December of 1978, is regarded as being the start of the Democratic Movement. In it, he argues that a fifth item, democracy, should be added to the Four Modernizations—industrialization, agriculture, science and technology, and military—because "without democracy, economic growth will encounter insurmountable obstacles." He believed that even though Deng had been returned to power, "the hated old political system had not changed," and insisted that real change in China would not occur until the system itself was altered.[13]

Wei defined human rights much more in Western than in traditional Chinese terms. He, more than the other activists, emphasized individual rights guaranteed by law. But neither individualism nor even the basic aspiration of the communist system for more equality could be achieved under the present system, because "the Marxist socialist experiment of using dictatorship to achieve equal rights" had been demonstrated to be a failure. "A dictatorship is a dictatorship; power is bound to fall into a few hands." Whereas most democratic activists believed that Marxism had been distorted in practice, Wei believed that despotism was inherent in Marxism. Although early socialist thought had acknowledged the human rights of all, the Marxist form of socialism—or what Wei called scientific socialism—had become separated from human rights, and he believed that a socialist system dominated by a monistic ideology "not only rejects the rationality of alternative ideas, but even the right of other ideas to exist."[14]

In addition to the spread of unorthodox ideas by wall posters and journals, protest demonstrations were staged in many cities. As peasants came to cities to present their grievances to the authorities, democratic activists organized their protests into appeals to Deng for the right to food, shelter, and employment, while youths who had been sent to the countryside during the Cultural Revolution demanded resettlement in the cities. Like Soviet dissidents, these demonstrators sought to attract international attention to use as leverage. The Party, believing the linkage between the democratic activists and the peasant movement to be the most immediate threat, arrested and de-

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tained indefinitely Fu Yuehua, one of the activists who had organized the peasant protests. Wei Jingsheng's journal, *Exploration,* called for punishment of her captors and was the first to expose the prison conditions of political prisoners by describing in graphic detail the destructive nature of the isolation cells and the mental and physical torture.

The democratic activists had clearly strayed beyond the limits of accepted criticism, and the signs of an impending crackdown began to appear. But the transgressions were inevitable, first, because the limits had never been well defined and, perhaps more important, because the activists' purposes were not those of the Party. They had denounced Mao, but for suppressing dissent and persecuting his critics, not—as the Deng leadership had wanted—for undermining Party organization and control. The activists wanted to promote democracy and criticism; the Deng leadership wanted to enhance the Party's political power and to push economic development. Moreover, in demanding a degree of pluralism, the democratic activists had challenged the Leninist one-party state, a basic tenet of Deng's thinking. By early 1979 the Maoist holdovers were gradually being weeded out of the Party hierarchy, and Deng no longer needed the democratic movement to oust his rivals and consolidate his position. In February, the Party newspapers charged that anarchism, individualism, and bourgeois liberalism were masquerading under the banner of human rights, and in March, Deng attacked the Democratic Movement as responsible for China's worsening economic conditions and increasing social instability.

Wei retorted that the leadership was once again blaming others for the failure of its policies, asserted that the Democratic Movement had in fact enhanced stability by making the leadership more aware of the people's needs, warned his countrymen against one-man rule, and urged criticism so that Deng would not "degenerate into a dictator."[15] His arrest followed almost immediately, and six months later, at a trial from which his family and friends were excluded, he was sentenced to fifteen years in prison. Given the fact that political dissent had been punished in the past without any pretense to judicial procedures, and people beaten, tortured, imprisoned, and killed without public notice, even the semblance of a public trial was a change. Yet, the verdict in the PRC, even under Deng, was a clearly

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political one: Wei was imprisoned as an example to deter others from similar actions.

Like the dissidents in the Soviet Union, the democratic activists had developed a subculture of alienation, conspiratorial discipline, and antipathy to authority. Although most of them had blamed China's problems on the bureaucracy and not on the Marxist socialist system—as Wei had done—and most had dissociated themselves from his attacks on Deng, they were united by a sense of impending repression, and came to his defense. A transcript of the trial came into their hands and was published in the *April 5th Forum*. Wei's concluding statement defiantly rejected the Party's charges against him, and avowing his innocence, based on the Chinese Constitution, restated his view of human rights: "It is the people's prerogative, when faced by unreasonable matters, to make criticism."[16]

In November, when Liu Qing, an editor of the *April 5th Forum*, went to seek the release of three activists who had been arrested for distributing copies of the transcript, he was thrown into solitary confinement for five months and then sent to a labor reform camp for three years without ever being indicted or tried. An account of his experience that he was able to smuggle out reveals his naiveté in believing that Deng had been moving toward a more democratic society. Liu insisted that he had acted within the right of free speech as spelled out in the Constitution and in the new criminal code promulgated in May 1979—which specified that detention and arrest could not be made without legal procedures and proper warrants—when he sought to assist his arrested colleagues. Moreover, he said, he had defended Wei because he believed that the way in which that case was handled would tell "how far China had proceeded on the road of democracy and rule of law"—not very, he had found. Democracy, he said, cannot develop from the benevolence of the ruling group but must rely on laws. Dissent must be allowed because "dissidents . . . sometimes represent reality," and their opposition often pushes society forward. To oppose vocally, as Wei had done, was not to subvert the system but to improve it. Liu believed that the perfection of Marxism depends on people questioning incessantly, and that "questioning, criticizing and opposing the system and policies of the state are not only human rights, [but] necessary levers for advancing society." He saw himself and his associates in the role of the principled

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literati of old, acting as the "courageous and outspoken friend" who dares to criticize.[17]

In contrast to the sharp shifts in policy under Mao, the Party responded gradually to these criticisms. In March 1979, it proclaimed Four Fundamental Principles—adherence to the dictatorship of the proletariat, Party leadership, Marxism-Leninism, and the thought of Mao Zedong—which were a reassertion of the Party's ideological control. Democracy Wall was moved to an out-of-the-way place and then banned altogether in early 1980. In February 1980, Deng proposed the abolition of the right, guaranteed in the 1975 and 1978 constitutions, to put up wall posters, and the practice of "reeducation through labor" was revived, allowing the police to put people in labor camps without court review, for offenses ranging from counterrevolutionary activity to hooliganism. By mid-1980 the Party had suppressed the unofficial newspapers and groups, although many democratic activists continued to communicate by private newsletters that focused primarily on the need for laws to protect from arrest without due process. Finally, in April 1981, the leading activists of the Democratic Movement were arrested in a nationwide crackdown; their homes were searched, and their books, papers, and letters confiscated. They were not formally charged with any crime nor given a public trial. By the spring of 1981, the Party had crushed the Democratic Movement, broken its network, and intimidated its sympathizers into silence. The rights to publish, speak, and assemble freely, guaranteed in the Constitution and used by the activists as the basis for their actions, were treated by the Party as criminal acts.

SEMIOFFICIAL DISSENT

Although the unofficial dissidents were suppressed, many of their ideas on democracy and human rights continued to be expressed in the official press by a number of well-known intellectuals. There was a symbiotic relationship between unofficial and semiofficial dissent. As in the Soviet Union, there was no clear-cut line between unofficial dissent and dissent within segments of the official establishment. Since many intellectuals and officials had also suffered years of persecution, some of them were as determined as the unofficial dissidents to work for freedom of discussion, legal rights, and limits on bureaucratic power to prevent another Cultural Revolution. The suppres-

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sion of the Democratic Movement and even the invalidation of the right to put up wall posters evoked little response from the public at large. Most intellectuals remained silent, not only because of past persecution, but also because the Deng leadership had given them respect, responsibility, material incentives, and opportunities to travel to the West—privileges that were unheard of before Mao's death. Nevertheless, a tiny minority of intellectuals, under the eye of the censor, continued to present alternatives to the official view and to work for reform within the system. Like their unofficial counterparts, they pointed out that the Cultural Revolution was not an aberration but had evolved from within the communist system.

Unlike the direct Westernized mode of their unofficial counterparts, the methods of protest used by the official dissenters borrowed from the traditional and indirect Confucian practices that had been developed by a number of literati over the centuries. The official dissenters had no legal protection, and like their literati predecessors, had to camouflage their political views in analogies and allusions in discussions of history, literature, and philosophy, or in fiction, poetry, and the theater. Intellectuals in the PRC were under even more pressure than the Confucian literati to mask their dissent, not only because of the ubiquitous secret police and the reality of prison camps, but because the Party controlled all aspects of an individual's life, from education to economic livelihood. Intellectuals who wished to protest or who no longer wished to serve the state could not withdraw from public life, as had the literati, but were obliged to participate actively in the tasks the Party set for them. Thus the only way for them to express dissent was subtlely, in their work.

Tradition resonates even more strongly in the strategy they used to dissent. Because of the lack of legal or institutional protection, some literati became martyrs, but most were prudent enough to criticize only when they had patrons and protection within the top leadership. Moreover, they could get a hearing only when they had allies in positions of power, and this usually occurred during periods of factional conflict, when literati were used in the political struggle. In the process of articulating their patrons' positions, some literati inserted views and values that differed not only from the prevailing orthodoxy, but also from those of their political patrons.

In the PRC in the early 1960s, when the Party relaxed its grip on the intellectuals to gain their cooperation in restoring the economy

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after the Great Leap Forward, a similar process occurred. A small number of well-known intellectuals protested against the suppression of intellectuals and the exploitation of the peasants in the Great Leap Forward. Like their ancient predecessors—and despite their Marxist proletarian orientation—they were concerned with the peasant's well-being. But since open criticism was impossible, they had to couch their criticisms in philosophical discussion, historical discourse, literary criticism, and in opera. They pointed out that the peasants had been victimized by Mao's untested economic and social experiments, and arguing that his methods of mass campaigns and ideological mobilization were no longer applicable to a modernized society, advocated more conventional economic practices. Since these views overlapped with those of a bureaucratic faction that was opposed to Mao but that could not express them openly, a group of highly placed intellectuals were able to express their views in the national and Beijing media under the aegis of high-level officials.

A number of these intellectuals, however, went beyond espousing their patrons' positions, by asking not only for a degree of intellectual autonomy, but for scholarly input into political decision-making as well. In the early 1960s, the bureaucratic faction wanted criticism of Mao's policies and a loosening of ideological restraints on intellectuals, but they were as unwilling as Mao to allow intellectuals to participate in policy-making or to voice public criticism of political decisions. Some dissident intellectuals whose views diverged too far from those of the bureaucracy were silenced by their own patrons even before the Cultural Revolution, while the rest were silenced, some of them violently, during it, by Mao and his radical associates.

A similar pattern of intellectual dissent occurred in the late 1970s and early 1980s, at the time of the Democratic Movement, when a small number of intellectuals expressed criticism through official channels, with some degree of official sanction. As in traditional times and in the Soviet Union, literature in the immediate post-Mao era was a major vehicle for expressing semiofficial dissent. Stories, plays, and poems were written on the officially approved topic of persecution during the Cultural Revolution. These works, which came to be called "the literature of the wounded," were generally tragic, but they usually concluded with the thought that the Cultural Revolution would not happen again, and they therefore signified faith in the new leadership. By the fall of 1979, however, as the mood

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of the nation turned more to the present and future than to the past, this genre had become outmoded, and was replaced by a more controversial one, "exposure" literature. This was a reference to the literature of the May Fourth era and to the works of Lu Xun, China's most famous modern writer, which exposed the darkness of society in the early decades of the twentieth century. In post-Mao China, "exposure" literature depicted injustices, social ills, corruption, and official privileges, not only in the Cultural Revolution, but in the periods before and after as well, periods in which those currently in power had been in authority. In the tradition of the Chinese literati and the May Fourth writers, this literature exposed the abuses in society in order that they might be corrected.

An example of this genre was the play *If I Were Real,* patterned after Gogol's *Inspector General.* In it, a young man deceives officials in Shanghai by pretending to be the son of a high military officer in Beijing. Because of his supposed good connections, he is readily granted all kinds of privileges, from obtaining theater tickets gratis to having a friend released from prison. When he is finally caught, he protests that he has done nothing wrong. He explains: "If I were really the son of some high Party official, then whatever I would have done would be considered legal."[18] The play went beyond censure of the Gang of Four to criticism of the prevailing system, which, because of the extraordinary power of its officials, prompted such abuses. Apparently, the play had gone too far, even for a leadership that had called for criticism, and the play was banned shortly after it opened.

The play was written by members of the Cultural Revolution generation, but the most daring exponents of the "exposure" genre were writers who had burst forth in the Hundred Flowers and were purged in the antirightist campaign. They were closer to the May Fourth era than the younger writers, and more willing to take risks than the older May Fourth writers. The latter had been very active before 1957, but were now too old and broken to seek anything more than peace and security, and after so many years of misfortune, were finally enjoying unprecedented renown and material comfort. The Hundred Flowers writers had been silenced for virtually twenty years, not by the Gang of Four, but by the very people in power when they were rehabilitated in the late 1970s. They sought to ex-

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pose the system that allowed both the antirightist campaign and the Cultural Revolution to happen.

The most controversial writers of the Hundred Flowers, Wang Meng and Liu Binyan, whose work had helped to incite the students to open rebellion in May 1957, were again among the most controversial of the post-Mao era. They had been brought up by the communist system and had a strong commitment to its principles. They were influenced not only by the May Fourth spirit, but also by the intellectual thaw that occurred in the Soviet Union in the wake of Stalin's death. In 1956, before most intellectuals dared to speak out on political issues, they wrote stories based on Soviet prototypes in which characters who lived up to communist ideals came into conflict with bureaucrats who did not. They depicted courageous, resourceful, idealistic young men and women who were frustrated in their efforts to improve the well-being of the people by apathetic, inefficient, cautious bureaucrats.

In the post-Mao era, Wang Meng dissented more artistically than ideologically. He wrote less of political issues and more of the emotions and relationships of everyday life. He experimented with a variety of styles, attempting to break the bounds of the realistic narrative that had so dominated Chinese writers in the twentieth century, through the use of intricate language and stream of consciousness, which evoked memories, inner feelings, and random associations. Wang believed that concern with political issues in literature stultified the writer's ability to express human emotions and to create artistic works. "Literature," he said, "is a spiritual act that deals especially with people's inner world and spiritual lives."[19] This more artistic approach could stimulate a new outburst of creativity in China. By depicting personal feelings, literary works might focus more on the individual. To be artistically apolitical in a society in which politics permeates every aspect of life is an indirect challenge to political interference in one's work and an effort to demarcate an area of individual choice. However, in post-Mao China, the Party has tolerated some artistic experimentation so long as it does not touch on political issues.

One other cultural expression that is tolerated in post-Mao China—and again, provided it is apolitical—is religious worship. The right to free religious expression had been guaranteed in the 1954 Constitution, but religious toleration deteriorated in the antirightist

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campaign and the Great Leap Forward. It was completely destroyed in the Cultural Revolution, as Red Guards destroyed mosques, temples, and churches, and attacked worshippers. Christian converts in particular retreated to clandestine worship in their own homes. As part of the Deng leadership's effort to reestablish control, win the cooperation of intellectuals—some of whom were Christians—and garner Western help, the right to freedom of religious worship was restored in the 1978 revision of the Constitution. Thousands of Christians (who made up less than one percent of the population) emerged to profess their faith in refurbished churches. Among them were a number of young people who, disillusioned by the excesses of Marxism-Leninism, were in search of spiritual fulfillment. So long as the religious institutions are not controlled by foreign interests—such as the Vatican—and accept supervision by the state, the Party permits this form of cultural expression, even though it runs counter to its antireligious, antitraditional impulses.

Unlike Wang, Liu Binyan, his Hundred Flowers comrade, in 1979 demanded that writers be given greater freedom to touch on political issues. Liu based his argument on both the Confucian view that the literati had the moral responsibility to tell the truth and on the May Fourth view that literature must expose the ills of the society. He urged his fellow authors to reflect society in their writing, as in a mirror, so that their work might serve as an object lesson to the leadership, to influence and restrain them. "If what the mirror reflects is not always beautiful, does not give pleasure, or does not make people happy, I ask comrades in authority not to blame the mirror but look into it and think of ways of removing from life whatever is not beautiful or whatever makes people unhappy." He feared, however, that some officials would rather break the mirror than correct the ugliness it reflected.[20]

In the past twenty years, he said, the Party had directed writers to distort the mirror's image, to falsify, for example, the realities of peasant life, by failing to depict the suffering and praising the glory. When he was sent to the countryside for labor reform in the anti-rightist campaign, he came face-to-face with the harshness of peasant life. If the truth had been told, perhaps writers "would have helped the Party realize and correct their mistakes earlier."[21]

Liu was one of the few official critics to point out that there could be no economic rights without political rights. Because the workers

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lack democratic rights in the workplace, people can neither move around freely nor choose what they would like to do. And if you do, "your family gets hurt too." What a person "needs above all is fairness, for a sense of morality and justice is one of man's distinguishing attributes."[22]

Liu presented a Western view of the writer and journalist. Although in China the work of investigating society is entrusted to the top leadership, Liu urged writers and journalists to follow the example of their Western and Japanese brethren, and carry out independent analyses of China's problems. He also expressed a Western view of human rights similar to that espoused by the unofficial dissidents. Never, he said, did democracy and legality exist in the PRC. He asked, "When respect for the basic rights of all citizens does not exist, how can there be true legality or democracy?" His rather Western view of the individual ran counter to the Party's emphasis on unity and the individual's responsibility to the collective. "Since each man is an independent being, physically and spiritually, his existence must necessarily be that of an autonomous individual." Like the unofficial critics, he claimed that this Western view was based on Marxism, whose "expositions on the peculiarities of man often derive from bourgeois thinkers." To Marx, "man is always a man first, a member of a class second." The atrocities of the Cultural Revolution came about, he said, because Chinese society did not appreciate the individual, and he thus pleaded for a true humanism and individualism guaranteed by democracy and law.[23]

In his own work, Liu's earlier enthusiastic, idealistic youths struggling against cynical, opportunistic officials were replaced by a few alienated individuals in conflict with a thoroughly corrupt officialdom. In one, *Between Man and Monster,* a female official uses her revolutionary facade to embezzle huge sums of public money in order to build up a powerful political and economic organization, unrestrained by any laws, institutions, or moral code. Although she is finally exposed and executed, the conditions that permitted her corruption are not changed. No laws are enacted or institutions established that might check the use of political power for personal gains. And with no hero or youth to come forward to rectify the system, the future as well as the present in Liu's work appears bleak. The response to the work was extraordinary, its appeal stemming from its unvarnished depiction of China's realities. Its audiences expanded

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beyond the intellectuals and youth of his earlier works to workers in factories, where it was read aloud.

The semiofficial dissidents, like their unofficial counterparts, went beyond criticism of the Cultural Revolution and bureaucracy to criticism of the system itself. Moreover, by the early 1980s, as the aftereffects of the Cultural Revolution subsided and the Deng leadership further consolidated its power, the Party was less tolerant of criticism, no matter how deftly disguised. Deng's reforms, it appeared, had intensified rather than diminished the "crisis of the socialist spirit." At the very same time as the final crackdown on the unofficial dissidents in April 1981, an attack was launched against the movie *Unrequited Love,* by Bai Hua, another outspoken former rightist. The initial blow came from the *Liberation Army Daily,* the official army newspaper, which blamed the scenario for instilling a mood of depression, pessimism, nihilism, ultraindividualism, and bourgeois liberalism that undermined China's unity, stability, and modernization; by July 1981, under continuing pressure from the military and increasing concern about disrespect for authority and weakened ideological control, the Deng leadership joined in and condemned *Unrequited Love* as being harmful to socialism. In December 1981, Bai Hua published a self-criticism in which he confessed that he had not distinguished the Cultural Revolution as a unique event in the PRC and had not shown the Party's efforts to redress past wrongs. A number of other "exposé" works were singled out for having exaggerated the sense of hopelessness and cynicism among the people and for inducing disillusionment with the system. As in the Maoist era, literary works were again held responsible for the ills of society.

Nevertheless, the tightening up of the early 1980s was not accompanied by large-scale campaigns as before. Whereas in past campaigns the targets and their associates, as well as their work, were attacked, this time only the writer's work was condemned, and criticism of a particular work did not preclude praise of his other works.

The Party's semicampaign against Bai Hua did not signify a lessening of its will to prevent a challenge to its authority but, rather, a rejection of the kind of large-scale, intensive campaign of the past. The Party was concerned that such a campaign might frighten off the scientists and intellectuals who were needed for industrialization and scientific development and who might be less willing to participate actively in modernization if they feared harsh, arbitrary treatment.

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As it had done before, the Party repressed dissent when it threatened political stability and the Party's power, but this time, it avoided the kind of disruptive, arbitrary campaigns of the past for fear of paralyzing all intellectuals. Instead, it utilized the more restrained, selective method, used in the Soviet Union, of choosing a few individuals as examples to keep the whole intellectual community under control. While the limits of the permissible were still wider than at any time since the Hundred Flowers, the attack on Bai Hua narrowed them from what they had been in the late 1970s. As the emperors had controlled the *yanlu,* the Party narrowed the flow of criticism. With uncertainty as to whether the avenues might narrow further and even close down, the criticism of a few literary works put pressure on *all* intellectuals, not only writers, editors, and movie producers, to be less daring.

With the conclusion of the Bai Hua case in December 1981, the limits of criticism were spelled out. Specific bureaucratic defects may be criticized, but not the political system itself, which must be depicted as leading the nation toward a glorious socialist future. Criticism of the decision of a certain organization, its work, or one of its leaders was the democratic right of a Communist party member or citizen, and was not to be regarded as opposing Party leadership or as bourgeois liberalism.[24] As under Mao, however, no laws or institutions were proposed to protect the person who made the criticism, and criticism was not to be allowed on a national level or against the system itself. Those who demanded a two-party system and freedom of speech, press, and assembly were denounced.

THE FUTURE OF HUMAN RIGHTS IN CHINA

Political rights and civil liberties guaranteed by law appear unlikely in the PRC as long as it remains a one-party state. Nevertheless, criticism and dissent will continue to be expressed because they are not merely the product of a particular moment in history or the result of the personal courage of individual dissidents. They arise from a structural phenomenon inherent in the Party's commitment to modernization. The need for the cooperation of intellectuals in China's economic development necessitates intermittent relaxations with their accompanying expressions of dissent. In these limited, fragmented intervals, dissenters invariably have expressed the criticisms,

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frustrations, and aspirations of the intellectuals and professional elites, and sometimes the grievances of the population as a whole, by means of a mixture of inherited and Soviet-style practices. Even if their methods are not democratic, some of their proposed reforms—particularly in the post-Mao era—were, specifically the demands for constitutional guarantees and laws to protect freedom of speech and of the press.

Without legal and institutional protections, it is likely that, as in the past, criticisms will be allowed only at the Party's discretion. Nevertheless, history seldom repeats itself. Mao, with his charismatic leadership and particular animus against the intellectuals, is gone. The Party's cyclical policy will continue, but the shifts may be more moderate. It is unlikely that nationwide campaigns against intellectuals as a group will be carried out with the ideological fervor and intensity of the past, because they are so disruptive to economic modernization. The Party still has the power to isolate, discredit, and force a self-criticism from anyone it wishes, as happened to Bai Hua. But it has chosen a more selective instrument of control than the large-scale, arbitrary, sometimes violent campaigns of the past. The indiscriminate terror and massive coercion of the antirightist campaign and the Cultural Revolution have given way to a mixture of cajolery, manipulation, and intimidation. Moreover, since Mao's death, China has been more open to the West for a longer period of time than in any other previous relaxation. There has been an influx of Western learning and scholars, and an efflux of Chinese intellectuals and students to the West where they might learn about civil and political liberties. In addition to the skepticism engendered by the radical shifts of policy of the past, the expression of semiofficial and unofficial dissent of past decades makes it unlikely that the Party will be able to impose the kind of monolithic ideological control that existed in the early years of the regime.

Since the Party regards any criticism of its policies as a challenge to its political power, it would be incorrect to judge a group's influence by the Party's reaction to it. Although in 1978-79 the critics expanded beyond a small circle of intellectuals to include industrial and white-collar workers, the critics, whether intellectuals, students, or workers, have no real power or mass base. The great majority of China's educated elite, like the rest of the population, are the product of a mainstream tradition and the current political system, which

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emphasizes a unified, consensual society and accepts the monopoly of political power. Though there was some passive resistance, there was little protest against the suppression of unofficial dissidents and the muting of semiofficial dissidents. Nevertheless, the fact that the Party has deployed such enormous resources to discredit this small group demonstrates that they have important social roots. Moreover, that they reemerge periodically, despite increasingly devastating campaigns against them, reflects a resilient, vital movement of dissent beneath the surface of conformity and coercion. Even more important, despite a largely closed society, their protests in recent years demonstrate that such Western concepts as openness, democracy, and legal rights have penetrated and been absorbed into the dissidents' consciousness.

Thus, although unofficial and semiofficial dissidents are politically weak, internally divided, and intellectually naive, their courage in the face of overwhelming power cannot but help, as it did in traditional times, to inspire others. Why does a critical minority continue to speak out despite the spectre of continuing persecution? Lin Binyan provides some explanation. "For more than twenty years my whole family, friends, and acquaintances have been implicated, so why do I continue?" he asked. He responded that if there were a change in the political atmosphere, he would be implicated again, no matter how much he might seek to conform. In addition, there is an element of idealism, and perhaps romanticism, in his persistent role as a critic, for he believes that to be a good Marxist and a good individual, one must speak out, no matter what the cost. If he did not, he asks, "What would it mean to be a Communist? What would my life mean?"[25]

Since those concerned with human rights in the West also share these views, why have they been so silent when writers such as Bai Hua and unofficial dissidents are suppressed? We may have pleaded ignorance in the past, but we now have journalists in China who give us much more immediate and direct information. We know, too, from the Chinese own description, that millions of people were killed, purged, and imprisoned in the past. Yet most Chinese dissidents, as opposed to their Soviet counterparts, have not asked for help from the outside world. Some claim that our protest would make their situation even more vulnerable. There are, however, a few who think otherwise, as evidenced by the open letter to President

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Carter, in an unofficial journal, asking him to pay attention to human rights in China.[26] Like Soviet dissidents, a few of the democratic activists have published works outside their country, primarily in Hong Kong. Some of the democratic activists, through foreign correspondents, pleaded with Western governments to press for the release of political prisoners. Liu Qing explained that it was difficult for ordinary people to be heard by their leaders, "but if the news happens to cross the ocean . . . it will be given favorable attention by the leaders."[27]

Whether Liu Qing's view is true or not, there have been times when public Western concern would have been counterproductive, as during the anti-Western hysteria of the Cultural Revolution. Yet there have been other times when it might have been effective, as in the late 1970s, when China sought Western and overseas Chinese aid in its modernization, and wanted good relations with the United States. Nevertheless, given China's history, culture, and sensitivity to infringement of its independence, it is questionable whether outside pressure would have helped the unofficial dissidents, whom most Chinese regard as peripheral to their society, though it might have been helpful in limiting the attack on the semiofficial dissidents. It is difficult to know the proper time and the most effective way to express our concern so that it would aid rather than harm those we wish to help. Nevertheless, if it appears that a large-scale persecution of semiofficial or unofficial dissidents is underway, and we restrain our protests as we have in the past, then we disregard China's humane values as well as our own.

ENDNOTES

[1]William T. deBary, *Self and Society in Ming Thought* (Columbia University Press, 1970).
[2]*Guangming Ribao (Guangming Daily),* December 29, 1973, p. 3.
[3]Hu Yaobang's interview with Yugoslav correspondent, Foreign Broadcasts International Service, June 23, 1980, pp. 1-4.
[4]Li Yi Zhe, "Concerning Socialist Democracy and Legal System," *Issues and Studies,* January 1976, p. 119.
[5]"The Truth about the Tiananmen Incident," *Honggi (Red Flag)* no. 12 (December 2, 1978), JPRS, no. 72804, p. 115.
[6]"Promote democracy and realize the Four Modernizations," *Renmin Ribao (People's Daily),* editorial, January 3, 1979.

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[7]Among the journals were: *April 5th Forum (Siwu Luntan),* the most influential journal in North China, edited by two of the major leaders of the Democratic Movement, Liu Qing and Xu Wenli. *Beijing Spring (Beijing Chun)* was edited by young people who participated in Tiananmen and published a mixture of fiction and political commentary. It had a more professional look, most likely because it was assisted by the government-run Foreign Language Press. *Enlightenment (Qimeng)* was formed by Red Guards sent to Guiyang from cities along the coast. *Today (Jintian)* experimented with obscure poetry and impressionistic fiction such as stream of consciousness, fantasies, and dreams that described the tragedy of the Cultural Revolution. *Mass Reference News,* in contrast to the Party's *Internal Reference News,* meant only for a selected elite; and *Exploration (Tansuo),* edited by Wei Jingsheng, the most militant journal. In Guangdong, the four major unofficial journals were: *Voice of the People, The People's Road, Shenghuo (Life),* and *Hongdou (Red Bean),* the latter published by students at Zhongshan University. As in the Soviet Union, there were unofficial poetry recitations in the parks and impromptu art exhibits.

[8]*April 5th Forum,* November 1978, in *A Collection of Current Chinese Underground Publications,* compiled by Yih-tan Lin (Taiwan), p. 129.

[9]Lu Min, "Democracy or Bureaucracy," *Beijing Spring,* in *The Fifth Modernization,* edited by James Seymour (Stanfordville, New York: Human Rights Publishing Company, 1980), p. 76.

[10]"On Human Rights," *Enlightenment,* in *The Fifth Modernization,* p. 121.

[11]Wang Xizhe, published in the Gangzhou journal *Voice of the People,* in *Wild Lilies, Poisonous Weeds: Dissident Voices from People's China,* edited by Gregory Benton (London: 1981), pp. 23, 31.

[12]Yi Ming, "China: A History That Must Be Told," *Voice of the People,* July 8, 1979. Ibid., pp. 39-44.

[13]The poster was published in the January 1979 issue of *Exploration,* of which Wei Jingsheng was editor. *The Fifth Modernization,* pp. 54, 52.

[14]Wei Jingsheng, "Human Rights, Equality and Democracy," ibid., pp. 68, 145.

[15]Wei Jingsheng "Do We Want Democracy or a New Dictatorship?" *Exploration,* March 25, 1979, in *Wild Lilies, Poisonous Weeds,* p. 48.

[16]A transcript of Wei Jingsheng's trial, in *Spearhead,* part 2, *Northern Autumn,* 1981, p. 34.

[17]Liu Qing's account of his experience in prison, in *Spearhead,* nos. 14, 15, Summer-/Autumn, 1982, pp. 11, 27, 47, 56.

[18]*Chishi Niandai (The Seventies),* Hong Kong monthly, no. 1 (1980): 95.

[19]*Chinese Literature for the 1980s: The Fourth Congress of Writers and Artists,* edited by Howard Goldblatt, (Armonk, New York: M.E. Sharpe, 1982), p. 72.

[20]Ibid., p. 107.

[21]Ibid., p. 106.

[22]Ibid., p. 113.

[23]Ibid., pp. 115, 123, 124, 126, 127.

[24]Hu Qiaomu, a close associate of Deng Xiaoping and Politburo member, set the limits for criticism. *Beijing Review,* June 7, 1982, p. 20, a modification of an August 1981 speech published in *Beijing Review,* January 25, 1982.

[25]*Chinese Literature for the 1980s,* p. 72.

[26]*Enlightenment* 3 (January 1, 1979): 3-10; JPRS, no. 073215, pp. 45-57.

[27]*Spearhead,* nos. 14, 15 (Summer/Autumn 1982): 30

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Tom J. Farer

Human Rights and Human Welfare in Latin America

MY MANDATE WAS TO POSE the central dilemmas of human rights in Latin America. As a novelist begins by finding the voice, the point of consciousness, appropriate to his tale, I began by considering whose dilemmas to dissect: The dilemmas of traditional oligarchs feeling the seismic shift of social forces and wondering how best to contain them? The dilemmas of military cadres caught between the temptations of power, which grow inexorably from the barrels of their guns, and the risk of unity that lies in wait on the political heights? The dilemmas of social democrats committed by instinct and interest to plural societies, but committed as well to a measure of social justice that the more pluralistic political orders of Latin America often seem unable to yield? The dilemmas of the rural poor, torn between the pain of exit and the dangers of voice? Latin America is a sea of dilemmas in which moral visions drown.

Being a member of the Inter-American Commission on Human Rights makes one a vicarious participant in other people's dilemmas. It also imposes a personal one, namely, how to relate the work of the Commission—enforcing the Hemisphere's formal humanitarian norms[1]—to the lives of ordinary people, the popular classes, with their vast numbers yet slight weight on the scales of what victors in the social wars call "justice." The following fable suggests the dimensions of that dilemma.

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II

Imagine first a country, let us call it Tierra Linda, that for one hundred years, ending two decades ago, had been governed by a succession of military dictators, supported by or allied first with local landowners and ultimately with an alliance of landowners and large industrialists.

Twenty years ago the combination of a succession crisis, brought on by the assassination of the reigning dictator and intensified by pressure from a liberal-democratic American president who had suspended military aid some months before the assassination, and an economic crisis, resulting from the discovery of a competitively priced substitute for guano, the country's chief export, gave the democratically inclined leaders of the country's two traditional political parties—the MRP (Movement for Progressive Reform) and the MDP (Movement for God and Country)—a long-awaited opportunity. They contacted several of the country's most prominent industrialists and landowners and proposed a joint effort to institutionalize civilian rule.[2]

The spokesman for the oligarchy agreed to the proposals, subject to inclusion of the following conditions in a new national constitution: (1) members of the Supreme Court would be appointed for life; (2) as a precondition to the expropriation of land or businesses, the government would have to pay the full value of the expropriated property as determined by a Court of Property Assessment, the judges of which would also receive life appointments; and (3) the maximum tax rate on income would be 20 percent. The party leaders acquiesced, and in addition said they would accept a slate of Supreme Court justices and Property Assessment justices chosen by the national associations representing industrialists and landowners. Furthermore, the traditionally more populist MRP consented to purge its left-wing youth movement and to refuse, under any circumstances, to enter into coalition with any left-wing parties that might participate in the envisioned elections.

As for the parties themselves, they agreed to have the presidency alternate between them during the next sixteen years and to divide more or less equally all ministerial and senior bureaucratic posts. Patronage at the regional and municipal level would also be shared. After this time, real competition would commence; the winner, how-

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ever, would continue to allocate a fair share of ministerial and other positions to the loser.[3]

The newly united civilians then approached military leaders and demanded their withdrawal from politics. After intensive bargaining, the generals agreed to adopt an apolitical role so long as the political parties abided by the following conditions: (1) military expenditures would never fall below 7 percent of the GNP, except with the consent of the Minister of Defense; (2) the Minister of Defense would always be selected by majority vote of the general officers of the armed forces; (3) the new constitution would extend military jurisdiction to all crimes against the security of the state, even if committed by civilians, and the new penal code would define such crimes to include assaults against public officials or any member of the armed forces, kidnapping, arson, and rebellion.

Twenty years have passed, during which five presidential and congressional elections have been held, and all parties to the original understanding have met their commitments. The country has, until recently, experienced steady, modest economic growth and a gradual expansion of the middle classes. But poverty in the rural areas, where land ownership remains highly concentrated, is intense, despite the heavy migration to the cities, now ringed by squatter communities and penetrated by vast slums. Underemployment and unemployment are estimated at no less than 40 percent of the population. Persons in this category live on the margin of subsistence. Infant mortality among families in the top 10 percent of the population is under twenty per thousand, not much higher than the rates in developed countries. In poor areas and especially in the countryside, it is close to one hundred. The top 10 percent of the population receives half the national income; the bottom 40 percent of the population receives 12 percent.

In recent years, import-substitution growth has slowed as the market tends toward saturation. Locally made goods, protected by high tariffs, are relatively costly. The worldwide recession and growing protectionism have hurt export industries. A combination of steady inflation, slow growth, and continued high birthrates has increased the number of unemployed and underemployed persons and visibly reduced opportunities for secondary school and even university graduates.

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Political leaders detect a growing sense of popular frustration. It coincides with the emergence of still small, but apparently well-organized, subversive groups. By agreement, the leading newspapers print very little about the exploits of these groups, other than an occasional army bulletin describing some "outrage," or a report on the capture, trial, and conviction of individuals for crimes against national security.[4] Allegations of torture during the interrogation of suspects, made by the handful of left-wing deputies, have been ignored by the press but published abroad. There is no censorship. The leading newspapers and magazines are controlled by four families.[5]

Perhaps partially in response to charges, made recently by the Conference of Bishops, concerning the mistreatment of detainees and condemning any deviation, however slight, from the rule of law, the president of Tierra Linda invites the Inter-American Commission to conduct an observation in loco[6] and prepare a report on the general situation of human rights in his country. With the full support of the government, the Commission carries out an on-site inspection and finds the situation as described above. Can it do anything other than conclude that Tierra Linda is a model of compliance with human rights norms? The press is in private hands and is free of official restraints. The judiciary is independent of the executive power; it recently found unconstitutional a new land reform law providing for payment in five-year government bonds at fixed interest rates. Elections are free. Even Marxist parties are allowed to participate. Freedom of religion is strictly observed, although because the national conscription law has no provision for conscientious objection, Jehovah's Witnesses are imprisoned for refusing to serve. The Commission does find some evidence of abuse during interrogation, but it does not appear to be institutionalized, and in one extreme case, where two persons accused of attempted kidnapping died during interrogation, the officer in charge was court-martialed and given a brief prison term.

In the course of confirming that elections are free, the Commission asks a well-respected Tierra Linda intellectual why the left-wing parties failed to rally powerful support among the poor. He replies, in essence, as follows. First, the rural poor are deeply dependent on the local landowning oligarchy. Of course the ballot is secret, but returns are broken down by village. The leaders of these small, cohesive social units believe that any community which fails to turn out a large

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vote for the party of the landowner on whom it is principally dependent will suffer. Moreover, most of the potentially rebellious younger men have left for the cities by the time they reach voting age. In addition, the traditional parties have roots in the countryside. Local party bosses maintain support by doling out patronage. The Left has nothing material to offer. Therefore, as long as the conditions of life for those who remain behind do not deteriorate dramatically, the rational, "mini-maxing" peasant, if he votes at all, votes for the parties of the status quo.

In the rich sugar-growing areas along the coast, where plantation labor was originally organized by MRP activists, workers are comparatively well paid and covered by the social security system, which provides a small pension on retirement and affordable vacation centers.[7] As for the cities, the analyst continues, here too the traditional parties are well organized, even in many of the squatter settlements. They identify and co-opt natural leaders, often giving them jobs in the municipal government. Leaders who refuse to join one of the parties are conspicuously unable to secure any services—water, electricity, occasional garbage collection, medical dispensaries—for their followers.

Finally, he concludes, the poor are both tired and cynical. They spend enormous amounts of time and energy searching for or commuting to work, and scrounging for food and building materials. They often suffer from malnutrition and gastrointestinal illnesses. People in this condition have little time or energy for attending political rallies. Many, moreover, are illiterate. And even the established parties make attractive promises. But nothing changes.

The Commission publishes a final report stating, in effect, that the situation of human rights in Tierra Linda is excellent.

Shortly after its publication, the government of Golfo Profundo, a neighboring state, invites the Commission to evaluate its achievements in the human rights realm. Until 1975 Golfo Profundo had an economic, social, and political profile very similar to that of Tierra Linda. But in 1975, responding to worsening economic conditions and incipient rural and urban insurgency, a military junta seized power in the name of tranquilization and reform. After some maneuvering, General Omar Hernández emerged as the dominant figure, and assumed the presidency. Close associates took over key com-

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mands in the armed forces. Having consolidated power, General Hernández introduced a set of wholly unanticipated reforms.

For rural areas, he promulgated a comprehensive land reform involving the expropriation of all holdings in excess of one hundred acres and all underutilized land. Compensation was to be paid principally in the form of twenty-year government bonds with fixed interest rates. Experts estimate that, given the rate of inflation, owners will receive about 25 percent of the actual value of their land.

Second, he converted all manufacturing enterprises to "social property."[8] Owners were left with 25 percent interests in management and profits. The other 75 was transferred to workers in the enterprises. The value of the transferred rights would be compensated out of enterprise profits at a rate to be determined by the new worker-dominated boards of directors, according to values established by special assessment tribunals; but the period of compensation could not exceed twenty-five years.

Finally, on the political front, General Hernández prepared a new constitution for submission to the electorate, one replacing the old parliament with a People's Congress. Proposed congressional districts were many and small, and candidates had to have lived in them for a minimum of five years prior to seeking office. The Congress would have the power to block legislation, which could only be initiated by the president, who would be popularly elected for a term of five years, no more than twice. As a transitional measure, however, the constitution provided that, upon its adoption, General Hernández would remain as chief of government for four years.

Prior to the beginning of the referendum campaign on the new constitution, General Hernández took a number of significant steps. First, he purged the Supreme Court, replacing its members with primarily younger men and women who had rallied around his reform proposals. In addition, he converted all newspapers into employee cooperatives,[9] and founded a government-owned paper. Finally, he nationalized the hitherto private radio and television networks and placed them under the control of a board ultimately responsible to the minister of the interior.

The reform decrees and the proposed constitution were announced simultaneously. On the same day, all banks were nationalized and foreign currency transactions limited to those strictly necessary for the conduct of commercial, industrial, and agricultural

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enterprise. Severe civil and criminal penalties were decreed for the violation of currency controls. Currency-control crimes and all other crimes against "national security," as well as disputes stemming from the agrarian and industrial reform laws, were placed under the jurisdiction of special three-person tribunals set up by General Hernández. Members of the tribunals were selected by meetings in rural and urban barrios. They included lawyers, students, ordinary workers, and peasants. At least one member of each tribunal had to be either a lawyer or a law student.[10]

The Commission finally arrives in the country, interviews representatives of all sectors of opinion, holds full and frank discussions with government officials, visits sessions of the special tribunals, visits industrial and agricultural enterprises, and then, having returned to its base in Washington, prepares a report with the following conclusions: (1) the government has violated the right to a fair trial and the right to judicial protection, since the popular tribunals have a fluctuating membership, include nonlawyers, and in general lack the elements required to satisfy Articles 8 and 25 of the American Convention on Human Rights, to which Golfo Profundo has adhered;[11] (2) the government has violated the right to property by failing to pay just compensation as required by Article 21 of the Convention;[12] (3) the government has violated Article 23 of the Convention, which deals with the right to participate in government. In particular, the postponement of presidential elections violates the requirements of Article 23 that "every citizen shall enjoy the right to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters."[13]

As is its custom, before publishing the report, the Commission sends it to President Hernández for his comments. He reads it and then dispatches his principal adviser, the distinguished author Gabriel Garcia-Machado, to reply on behalf of the government. Garcia-Machado flies to Washington, appears before the Commission, and delivers the following statement.

"With respect to the courts," he begins, "we had to bypass the old judicial system. Of course it was formally independent; but it was so wedded by class and family ties and ideology to the oligarchical society we are trying to alter, that the judges could not be entrusted with enforcing laws designed to block a foreign-exchange hemorrhage

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and to repress armed conspiracies by the oligarchy. The fluctuating and partially nonprofessional membership of the new tribunals reflects our belief that the judiciary should be responsive to the needs and enduring values of ordinary people, who should feel that the courts exist to serve them.

"As to the alleged failure to pay just compensation, we reject categorically the equation of 'justness' with market value. Was it just that so few should have had so much? And how do you think these families, who remain obscenely rich even after our expropriations, acquired their holdings? Do you think they found unoccupied land or that they bought it at fair market value? Let me tell you, my friends, they were the original expropriators, and they paid *no* compensation. Whatever they may subsequently have contributed is certainly reflected in the compensation we are paying.

"Finally, with respect to our supposed violation of political rights, I ask you: Who has more control over his life? Our peasants, who now own their own plots or are shareholders in cooperatives, and our workers who now govern their own plants, or the popular classes of a land you call a democratic model, our good neighbor, Tierra Linda. There, once every four years, as required, the population marches to the polls to chose between two men whom they know not and who know not them. What does that ballot have to do with the day-to-day reality of their lives? What does it have to do with their sense of personal value? You don't know. You don't know because you don't *want* to know. It would be information irrelevant to your mandate as you define that mandate. Political rights must be related to the reality of participation in the decisions that govern the day-to-day quiddity of your life. Without that connection, these rights are lifeless forms.

"The reactionaries are right (he smiled at the pun). Freedom is property. Without property, a man is a helpless thing. And he knows it and feels the self-contempt that goes with that knowledge. We have acted to equalize the power people have over their lives. If your Convention cannot recognize that, then you may need a new convention.

"Let me add that you criticize us also for delaying elections and then limiting congressional power. Let me ask you: Who would win if fair elections were held today? Probably the General. But he has not had time to organize a political party and to identify a new class of leaders stemming directly from the people. So the parties of the

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middle and upper classes, funded now by the oligarchy, which still has plenty of money, would dominate Congress. Even by the most generous definition, the middle classes—of course I include our labor aristocracy—make up less than 30 percent of the population. They would support redistribution of wealth from the oligarchy to them. Full stop![14] If the choice, for instance, is between increasing their social security benefits and extending the reach of social security at existing benefit levels, of course they will oppose extension. They will not even support the land reform, because initially it is causing some disruption of production. Moreover, the peasants are growing more food than export crops. This has hurt our balance of payments and therefore our import capacity. So we have placed heavy import taxes on nonessentials like television sets and cars. And we limit the foreign exchange that can be taken on holidays. So no more shopping sprees in Miami, despite the cheap fares. In short, gentlemen, free elections today, when the majority are still disorganized and distrustful of all governments, even this new one, will be a test of organizational skills and political sophistication, not a test of informed popular will."

The Commission was moved by Garcia-Machado's eloquence, but I am by no means certain that it will alter the report.

How serious are the dilemmas posed by Garcia-Machado? Is he persuasive in the context of my hypothetical countries? Is he persuasive in the context of the real world of Latin America? Even if he is, what should we conclude about the relationship between the human rights of the legal texts and the ideals of social democracy?

Despite their profound importance, the issues raised by Garcia-Machado must remain on the periphery of concern to institutions directly engaged in the defense of human rights. Representative democracy may conceal scarifying injustice. People may fairly dispute the most appropriate means for promoting participation in government and distributive justice. But no one at all these days will defend torture, murder, and arbitrary detention as acceptable means to any ends, however nominally noble.[15] Conservatives, liberals, and social democrats agree on the categorical prohibition of these devices. Thugs use them—in self-indicting clandestinity, to be sure, but they use them. And it is these violations of incontestible rights, transcending ideological differences, that are naturally at the very heart of the human rights defense effort. Legitimate dispute about the relative

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humanity of various political projects begins only after we move outside the zone of barbarism.

III

The points sharpened, it is hoped, by my little allegory can be restated in terms of the following questions: What are the prospects for the amelioration of mass poverty under Latin political systems characterized by party competition and periodic, relatively free elections? Do authoritarian regimes of the left enjoy an acute comparative advantage as instruments for constructing a floor under extreme poverty? What sorts of humanitarian costs are incurred by recourse to authoritarian methods? Are conventional interpretations of human rights texts insufficiently responsive to political reality in Latin American states? My responses to these questions will be both schematic and tentative, intended more to provoke debate and research than to convince—for how can I reasonably hope to produce a higher level of conviction than I myself have achieved?

Turning to the first question, my discomforting conclusion is that no regime in Latin America which has achieved power and ruled according to the norms of the political game practiced in North America and Western Europe has succeeded in altering significantly either the distribution of income or power; nor has it succeeded in placing a floor under extreme poverty and integrating a large proportion of hitherto marginal persons. The Chilean experience haunts every democratic reformer in Latin America. It showed just how quickly a major effort to redistribute power and property can polarize a society, to the point where even a strong tradition of civilian and constitutional rule cannot contain unleashed social passions. Chile suggests, but *only* suggests, that democratic processes may not be tough enough to withstand the pressure of a redistribution that seriously affects the status or income of the middle and upper classes.[16]

Yet it remains far from clear just how much Chile has to tell us about the prospects for democratic reform. The absence of a congressional majority for the reform coalition, the coalition's at least rhetorical ambiguity about its long-run commitment to democratic institutions, its failure to discipline its extremist wing, its decision to expropriate alien property without payment of *any* compensation, the fallen copper prices, the coalition's assumption of office at a time

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when the American presidency was in the hands of harsh and amoral conservatives—all of these factors simply constitute too many idiosyncratic elements to allow much confident drawing of conclusions.

Chile certainly demonstrated that a government with the will to effect a fundamental transformation of class relations could come to power in a Latin American state. Whether any such government could survive the effort remains unclear. Other Latin societies have not been tested because they have not produced governments with the will to try.

The leaders of Venezuela's *Accion Democratica,* for example, as part of their arrangement with the Christian Democrats (COPEI) and upper-class leaders, an arrangement that preceded—and probably was a precondition for—the reestablishment of democratic rule after the dictatorship of Perez Jimenez, openly eschewed the effort.[17]

With the exception of Chile's *Unidad Popular,* successful democratic politicians have solicited support without challenging the essentials of the status quo. In the absence of such a challenge, particularly in the countryside, is it possible to improve substantially the conditions of the poorer classes, that proportion of the population—varying from roughly 30 to 60 percent and even higher in the poorest countries like Bolivia—who live on the edge of subsistence?

A small number of so-called populist regimes—the first Peronist government being the most notable—after achieving power through electoral coalitions of import-substituting industrialists and workers in the modern sector, have enriched the income shares of the latter and, by mobilizing them, have increased their potential for becoming an autonomous political force. Because Argentina is highly urbanized, Peronism's typical populist bias against the rural sector did not have the usual consequences of deepening peasant misery, that is, of plundering the many to pay a relatively affluent few. In less urbanized countries, the short-term balance of populism's welfare consequences has been problematical.

The tendency of populist leaders to ignore, if not to ravage, the countryside is a symptom of their fundamental flaw—an unwillingness or inability to deal comprehensively with the linked problems of late-industrializing states marked by an inheritance of narrowly concentrated power and profoundly divided societies.[18]

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IV

A decade ago, *Redistribution with Growth*,[19] that classic exposition of strategies for ameliorating poverty in developing countries, pointed out that the Latin American context is distinguished by relatively high per capita income and, compared to the other great centers of pauperism, a uniquely high concentration of productive assets, most conspicuously land. Economic growth and the concomitant penetration of capitalist relations of production into every nook and cranny of society tends, at least initially, to aggravate inequality:[20] where capital, skills, and influence are already sharply concentrated, the growth of inequality is correspondingly more acute.

The only sizable nonsocialist states that have resisted this powerful byproduct of rapid growth are Taiwan and South Korea. Both carried out sweeping land reforms before their economies began to swell, and thereby produced a class of highly productive, labor-intensive capitalist farmers who fed the cities, generated foreign exchange, and formed a substantial market for the countries' infant industries. In addition, their numbers, financial independence, and economic importance gave them leverage to combat the sorts of urban-biased price restraints and foreign exchange manipulations that have savaged the local food-producing portion of the agricultural sector in much of Latin America.

The concentration of land ownership in Latin America is no doubt related to the character of Iberian imperial appropriation, though not in any single, indisputable way. While in some countries latifundia is a lineal descendant of the colonial order, in others it followed independence. During the latter part of the nineteenth century, under the generous patronage of the Mexican dictator, Porfirio Díaz, both domestic and foreign interests constructed great estates by the simple expedient of confiscating the communal lands of the Indian peasantry. Though the Mexican Revolution in its turn displaced many of these owners, the estates survived in the hands of a successor oligarchy for another two decades.

The great redistribution managed by President Cárdenas in the second half of the 1930s seemed to complete the revolutionary process. Thanks to Cárdenas and his supporters, the old hacienda with its quasi-feudal relations was in fact dead. But those who believed that a strong, independent peasantry would rise in its place were mistaken.

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Within one decade, the large farm began to reemerge as the dominant actor on the rural stage,[21] though this time, in the form of a high-technology capitalist enterprise.

Like the old hacendados, the owners could summon to their aid the resources of the state. No pistoleros were needed to tranquilize an army of dependent peasants, because modern agrobusiness does not need many workers and can choose from a reserve army of the rural unemployed. Instead, the state provided the overhead of a successful agriculture: research, irrigation, subsidized credit, cheap energy and fertilizer, and roads. Where more land was needed, it could be bought or leased at firesale prices from impoverished peasants, who had been left to rot on their very own withered ground. Under such felicitous conditions, only fools would bother to steal it.

Mexico is not the only country where land reform has not stabilized a powerful middle-class peasantry. Contemporary land concentration seems to me more a symptom than a cause of inequality and absolute need. The decisive assets in Latin America's power game are liquid wealth (often accumulated over many generations), inherited social prestige, entrepreneurial and organizational skills, and connections with foreign (primarily American) centers of power and wealth. It is the intense concentration of these assets in most Latin countries, coupled with the extreme deprivation of the popular classes, that limits so sharply the deployable power of theoretical majorities and tends to rip the substance out of electoral politics.

The difficulty of achieving the more balanced class relationships that have developed in the welfare democracies of North America and Western Europe is compounded by the fact that, in the culturally heterogeneous countries where most Latins live, possession of these assets correlates significantly with being white. As in the United States, race tends to reinforce the inherited structure of inequality.

Putting race to one side, is the context of Latin American industrialization really very different from Western Europe's on the eve of its industrial revolution? Certainly not insofar as the distribution of land is concerned. The enclosure movement radically concentrated landholding in the century preceding England's pathbreaking takeoff. And if concentration did not actually intensify, it certainly underwent no marked diminution in other European countries as they hastened after the British vanguard.

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Today's theories about the income-concentrating effects of industrialization derive initially from the European experience. It is now agreed that British income-inequality intensified at least until the middle of the nineteenth century, more than sixty years after the revolution's first spasms.[22] Thereafter, distribution appears to have remained fairly stable for several decades. Not until the far end of the century did a reverse trend take hold. And only in the middle of the twentieth century did the combined effects of economic growth, the redistributive efforts of government, and possibly, the natural working of the mature capitalist economy manage to place a floor under extreme poverty.

Drawing on this experience, optimists—in most cases, paradoxically, political conservatives—have urged serenity in the face of contemporary misery.[23] The late-industrializing countries, they argue, are simply passing through a necessary stage. Moveover, they argue, by virtue of the dramatic increase in human knowledge about the workings of economies, the technological revolution, and the mobility of productive factors, the several phases of the modernization process can be drastically telescoped.

Pessimists,[24] on the other hand, respond that certain features of contemporary economy and society, including the technological revolution, the mobility of capital, and the general porosity of frontiers, preclude reproduction of the European pattern, much less allow any reduction in the length of its phases. To summarize (without mutilating, I hope) an elaborate and subtlely defended set of arguments, the central obstacles to reproduction of the Euro-North American experience are the following. First, the population explosion, reinforced by the disappearance of empty land, has created a huge surplus labor force—one that has apparently outstripped the capacity of Latin American economies to generate productive employment. In Europe, for example, the wage share of national income began to rise only when, as a consequence of overseas migration, sustained economic growth, and mortality rates that remained high, labor became relatively scarce. In peripheral, late industrializing states, the importation of a capital-intensive technology, developed in the tight labor markets of the developed world, compounds the difficulties of labor absorption, just as it exemplifies the peculiar problems of managing equitable growth.

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Second, when neither technology nor capital could move so easily across national boundaries, and when the extant technology was rather simple, local entrepreneurs had far greater incentives to develop their own variations—which, as rational profit maximizers, they inevitably did, taking into account relative factor costs. The operation of today's integrated world economy discourages indigenous technology creation despite the huge gap that has opened between the cost of labor in developed and developing states. Why? Because foreign technology is often available at marginal production costs; because the exogenous stimulation of a premature consumerism produces an insatiable hunger for high technology goods developed in and for the relatively rich inhabitants of developed states (and not readily duplicable, if duplicable at all, by more intensive labor techniques); because many local manufacturers are subsidiaries of multinational corporations that can generally maximize global profits by transferring, often at inflated costs, their own technologies developed in the more labor-scarce centers of corporate activity; because artificially high exchange rates and low tariffs on capital equipment, championed by increasingly dominant industrial elites, understate the real cost of imported technology; because the multinational manufacture of components—an important source of industrial activity in some countries—requires a uniform technology; and because, particularly for parastatal corporations able to draw on public revenues, installation of the newest technology appears to induce a satisfying sense of economic progress.

A third factor cited by the pessimists, and implicated in choice-of-technology decisions, is the development, in advance of a modern economy, of a swollen state structure. Being colonized by the dominant classes, it is inclined to distort market forces and to repress the popular classes on their behalf. Modern technology facilitates repression. Tear gas grenades and a machine gun would have saved the Bastille.

The fourth source of pessimism, one that is in some respects paradoxical, is the muting of nationalist ambitions brought about in part by the post-World War II normative assault on armed diplomacy, in part by a sense of class solidarity in an ideologically polarized world, in part by the hemispheric Pax Americana. In nineteenth century Europe, interstate rivalries encouraged the upper classes to instill a sense of nationhood in the lower classes, for without it, the elite would

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have found it difficult to conscript them as cannon fodder for the wars of national aggrandizement that the ruling class saw as a natural feature of international relations.

A fifth verse in the litany of pessimism emphasizes the immense fluidity of capital. The ability to move capital quickly from one place to another, combined with ready access to information about global investment opportunities, has opened a wide vista of alternatives to the owners of capital, and has consequently forced governments to compete in the provision of investment incentives. Among favored incentives is a docile, low-wage work force.

To be sure, there are countervailing forces, among them, *ideas*—the obligation of governments to satisfy basic needs as a very condition of their legitimacy, as opposed to the watchman, noninterventionist state of nineteenth century and contemporary Chicago School mythology; equality, at least of opportunity and merit rather than inherited status, as justification for unequal rewards—and *institutions*—the enhanced competence of state structures in the late-industrializing states, making them potentially more efficient tools for equity-enhancing intervention; the defection of the Catholic Church from the oligarchic coalition.

Even some of the factors invoked by pessimists have a Janus-like form. The invention of means for dramatically enhancing output per worker creates opportunities for governments, anxious to do so, to confront the equity issue. The diffusion of information about lifestyles in developed countries, though it seeds a morbid consumerism, also strengthens demands for human rights among once quiescent sectors of the populations. And by stimulating the migration of the poor in droves toward the source of opulence, it thereby creates incentives for the United States to encourage social reform in Latin countries. Although the policy of the current administration in Washington is instead to bolster reactionary regimes, such perverse ideological fixations may not endure as national policy.

V

The belief that without profound institutional change, steady growth in the GNP by itself can do little to ameliorate the conditions of the poor clearly lies behind the uneasy sympathy of the democratic Left in the United States and Western Europe toward revolutionary

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reformers. Cuba is their model. What has it in fact accomplished? As Nelson Valdez notes, there is a consensus among scholars of a wide variety of ideological positions that, on the level of life expectancy, education, and health, Cuban achievement is considerably greater than one would expect from its level of per capita income.[25]

A recent study comparing 113 Third World countries in terms of these basic indicators of popular welfare ranked Cuba first, ahead even of Taiwan—which is probably the outstanding example of growth with equity within a capitalist economic framework. Data in the 1981 World Development Report of the International Bank for Reconstruction and Development also support the consensus. Cuba excelled according to all main indicators of human needs satisfaction. For instance, out of the 124 countries studied in the survey, with 124 as the top ranking in each category, Cuba ranked 103rd in life expectancy, 98th in infant mortality, 122nd in primary school enrollment, and 102nd in adult literacy—yet its GNP ranking was only 76th.

Even before the revolution, Cuba surpassed most Latin American countries in its levels of health and education. What has changed remarkably is not so much the gross indicators as those that reflect the changed conditions of the poor, particularly the rural poor. In 1958, for example, the one rural hospital in the entire country represented about 2 percent of the hospital facilities in Cuba; by 1982 there were 117 hospitals, or about 35 percent of all hospitals in Cuba.

Also revealing is the shift in the major causes of death in Cuba. Before 1959 the majority of illnesses that led to death were those traditionally associated with underdevelopment: diseases of the digestive system and of early infancy, and respiratory problems such as tuberculosis. "At present," Valdez concludes, in his exhaustive survey of the data, "Cubans die for basically the same reasons as people in the developed world: congenital abnormalities, lesions affecting the central nervous system, diabetes, etc. . . . Cuba has eradicated polio, diphtheria, and malaria."

The achievements are undeniable. Could they, however, have been accomplished in a more open political system with a market economy? Skeptics about the asserted relationship between authoritarian socialism and the eradication of pauperism speculate that a capitalist Cuba would have enjoyed high growth during the international

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boom years of the 1960s and 1970s, particularly in light of its proximity to the United States, its large middle class, and relatively good infrastructure. And, skeptics conclude, the benefits of such growth would have trickled down sufficiently far to raise the poor up to or above the level they have achieved under Fidel Castro.

Since the revolution, Cuba's economy has grown markedly more slowly than those of most other Latin countries that are at roughly comparable levels of development.[26] It could therefore be argued that the distributional efforts in the fields of health, nutrition, and education have been necessary to compensate for the Cuban government's initial failures in the realm of economic management. Or, as a Polish wit put it recently, communism is a system of political economy that mobilizes the citizenry for heroic sacrifice to overcome the inefficiencies of the system. Since the stagnant 1960s, however, there has been steady, though unspectacular, growth. The CIA estimates that in 1982, a year of absolute shrinkage in most of Latin America's fast-growth economies, Cuba's GNP grew approximately 4 percent.

Skeptics nevertheless insist that with respect to the satisfaction of basic needs, Cuba is a special case, because a significant part of the social surplus used to place a floor under extreme poverty is earned through political and military service to the Soviet Union. Without a Soviet subsidy, estimated to have run as high as $1 billion in some years,[27] Cuba would have come nowhere near compensating for its inefficiencies and the departure of human capital, the result, at least in part, of its adoption of an authoritarian political system and from its policies of redistribution. As Salvador Allende and, more recently, the Sandanistas discovered, the Soviet Union is not prepared to provide comparable subsidies for new Latin recruits.

Despite claims to the contrary by such distinguished authorities on the global economy as Ronald Reagan, authoritarian-socialist regimes do *not* as a group display a strong tendency to produce economic stagnation. The CIA recently estimated Soviet growth over the past thirty years at roughly 5 percent per annum. Since the end of World War II, several East European countries also have grown steadily under varying economic arrangements. Therefore, one must argue either that growth, in the generality of cases, will be *slower* under state capitalism, despite its diversity of economic strategies, or that authoritarian socialism is peculiarly stifling to growth in the Latin American context.

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Certainly, other factors enter into Cuba's failure to match Brazilian and Mexican growth rates. Among them are the country's deep prerevolutionary dependence on the United States and the romantic egalitarian policies the Cuban leadership pursued in the early postrevolutionary years. Castro himself has said that his greatest error was to eliminate the private sector. In fact, he had gone even further by trying to eliminate virtually all material incentives. If Castro can learn something from his experience, so, a fortiori, can revolutionary leaders who have no vested interest in confirming their omniscience. Furthermore, we should not lose sight of the fact that Cuba alone among Latin states consciously subordinated overall growth to equity and the refinement of human capital.

We can, with good reason, be skeptical about the claim that under a liberal-capitalist regime, the Cuban economy could have grown very rapidly, and thereby have met basic human needs without a significant redistribution of income shares or social power; there has been little reduction, if any, in the number of people living in conditions of absolute poverty in the fast-growing economies of Latin America, most notably Brazil and Mexico. Since the 1950s, both countries have had, by historical standards, extraordinarily high income growth rates. Growth rates in excess of 6 percent per annum enlarged the middle classes and, at least in the Brazilian case, increased the income shares of the upper middle class. Yet shares of the lower 30 or 40 percent actually shrank, since growth by itself could not compensate for the cumulative consequences of an initial concentration of capital, income, and education, a capital-intensive technology, and a demographic explosion.

In light of this, is it likely that a capitalist Cuba would have introduced the reforms necessary to spread the growth dividend to all sectors of society? Indeed, given Cuban dependence on the United States—political, economic, and psychological—and the extent to which U.S. interests would have been affected by rural reform, wasn't the prospect for such reform even lower in Cuba than in many other Latin states whose governments failed to overcome the entrenched power of rural interests?

VI

Under any definition, regimes of the Cuban variety, and certainly the Cuban regime itself, plainly diminish the political and civil rights

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of intellectuals, businessmen, the professional classes, and workers in the modern sector of the economy, at least those who have made a relatively secure place for themselves, either because of their skills or because of their membership in independent and relatively powerful trade unions. When one turns to the previously marginalized classes, the balance may be less clear, and the arguments about autonomy made by Garcia-Machado, my hypothetical leftist intellectual, are rather more plausible. The sheer experience of physical health might easily enhance a person's sense of efficacy, and hence autonomy. Guaranteed access to employment, medical services, and at least minimally adequate nutrition would also be expected to increase one's sense of security, an important element, one would suppose, in the subjective experience of autonomy.

Perhaps paradoxically, the institutionalization or bureaucratization of the revolutionary regime also may enhance autonomy for those marginal sectors previously dependent on wage labor and sharecropping. In their former existence, they were probably subject to the largely uncontrollable whims of employers and owners. In the early postrevolutionary stage they may be no less subject to whim, in this case, that of party enthusiasts. But after chaotic fervor and voluntarism yield to organization, a dense network of rules will tend to replace discretion. Left-wing authoritarians will introduce "socialist legality," their version of *estado de derecho* (a government of laws, not men), if not for reasons of morality and legitimacy, then certainly to enhance efficiency.

Rules are two-faced: as they restrain, they necessarily demarcate areas of freedom. But even the restraining aspect of rules may enhance freedom. Knowing what is demanded, one can chose either to obey or to evade—and risk the consequences. Where, however, continuing employment turns on unpredictable factors, ranging from the master's whim to shifting patterns of world demand for a crop he produces, then one lives outside the realm of choice, and hence of autonomy in any sense—assuming there are neither alternative forms of employment nor other means of support.

The evenhanded, predictable application of well-defined rules is one autonomy-enhancing result of the revolutionary interest in efficiency. I should add, however, that the interest in predictability may not apply when the state is dealing not with formally marginal and depoliticized persons, but with those who are politically aware. To

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keep them in a state of perpetual intimidation, the state may prefer to maintain a broad area of uncertainty about the correctness of one's conduct, defining crimes in such vague and comprehensive terms—for example, "subversion of the revolution" or "violations of the interest of the proletariat"—that even those who wish to maintain a low profile cannot avoid punishment.

The state's interest in efficiency may also lead to some enhancement of autonomy of the previously marginalized classes, in that instrumental concerns may produce the organization of political participation—the capacity to influence the allocation of public goods and services—at the bottom of the political pyramid.

One of the intrinsic weaknesses of an authoritarian regime is the lack of adequate feedback mechanisms. Having eliminated all political competition, how can the leadership monitor the performance of officials at the end of the chain of command? Of course they can and do set up a duplicate structure of party and state to verify performance. But this is expensive and filled with the promise of debilitating bureaucratic conflict. Moreover, it does not rule out collusion between officials and party monitors. Thus it may be very useful, even necessary, to empower ordinary citizens to discipline errant officials. Empowering the objects of governments to evaluate their immediate governors serves to enhance bureaucratic performance and helps build active loyalty to the regime. In addition, the revolutionary elite may see it as another way to transform social consciousness from individualistic toward more communal conceptions.

Perhaps all these considerations were at work in the Cuban decision to create the Organs of Popular Power that made their national debut in 1976.[28] They were designed to invest the general citizenry with power to oversee governmental activity at the local, provincial, and national level, but so far have shown signs of efficacy at the local level only.

Municipal delegates are nominated at open meetings held in the barrios. Apparently, party activists closely monitor the nomination process, but they do not exclude all nonparty members. Candidates chosen by majority vote in these gatherings then compete for selection as delegates from a large urban unit to Municipal Popular Power. In the end, about 75 percent of delegates are members of the Communist party or affiliated organizations.

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Without going into detail, let me say that this institution does provide some participation, in two respects. One of its functions is to take care of the needs of citizens. For example, citizens can go to delegates or members of Municipal Popular Power in much the same way that citizens of, say, Chicago can go to ward leaders to obtain assistance from the state to carry out some personal task or to fulfill some personal need, such as obtaining building materials. The other is to monitor the operations of municipal government. Delegates are required to report to their constituents periodically with respect to promises made at earlier meetings. Even the obligation to admit to and explain failure must have some disciplining effect. Beyond that, the election process goes on, and it is possible to remove delegates at the local level. There is no indication at this time of Popular Power gradually extending its influence up through the provisional and into the national level, where the most important allocations of public goods continue to be made by a very small elite.

Let us suppose that by distributing land and strengthening the infrastructure of small-scale agriculture, by creating jobs, by generalizing social security, and by opening Cuba's recreational centers to urban marginals and rural proletarians, that by doing all these things Castro's revolution actually enhanced some people's sense of autonomy, dignity, and well-being. That supposition rests on assumptions about the relationship between changes in material conditions and changes in subjective states, assumptions that, through a process of introspection and projection, external observers like myself find plausible. The remarkable anthropologist Oscar Lewis was struggling to test this assumption when premature death cut short his research. Without the benefit of his completed study—which at best would have been only suggestive—we fall back on projections from personal experience and from the negative self-images, documented by Lewis and others, among marginalized people in several Latin communities.[29]

But accepting my initial assumption about the subjectively liberating effects of Castro's reforms, and assuming further that these effects required a radical transformation of state-society relationships imposed without broad consultation and consent, is it then possible to construct a satisfactory moral calculus for the Cuban Revolution? Certainly the calculus must take account of the reduced freedom and,

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in many cases, exile for the upper classes. It must, in addition, incorporate, as best it can, speculations about the future course of the revolution, about what happens to intellectuals no longer absorbed in the struggle for elementary social justice, and former marginals, now literate and economically secure, ready to exercise their new freedom. The former will inevitably return to their natural role of social critic; the latter, having been endowed with the security and dignity of a bourgeoisie, will be drawn into the universal culture of consumerism, seeking satisfaction in material acquisition and the space to express idiosyncrasy and ambition. If the regime cannot respond by creating space for its former supporters and by establishing competitive channels to resolve the allocative and other contradictions inherent in every social organism—if, in brief, the regime attempts to maintain the social and political solidarity and consensual hierarchic structure of the revolutionary moment—its claim to having once served as a liberating force will be drowned by the cries of its new prisoners. Beyond losing any present claim to moral esteem, it would thereby compel us to recalculate the value of its original achievement.

Jeane Kirkpatrick and her acolytes, in hawking the distinction between authoritarian regimes of the left and right,[30] refuse, in their rapidly dogmatic way, to impute to the former any possible initial contributions to human dignity and autonomy. Instead, they indict the leftist variant, not only for its presumed stability, but precisely because of its supposedly *unalterable* vocation for the comprehensive elimination of autonomous institutions and individual space. The empirical base for this claim has always seemed to me reminiscent of George Bernard Shaw's description of metaphysical inquiries: it is, he said, like searching in an unlit cellar at midnight for a black cat who is not there.

Regimes that acquire power through force of arms and with the intention of transforming both society and economy for egalitarian ends continue to assume a remarkable diversity of forms and tolerances. They include Albania's Gothic tyranny; Yugoslavia, with its decentralized economic system, ongoing experiment in worker control, and considerable tolerance of ethnic and religious diversity; Poland, with its large private-farming sector; consumerist Hungary; Nicaragua, where 60 percent of the economy remains in private hands; China, once derided as the land of blue ants, whose leaders,

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dismissed at one time as crazed ideologues, are reexamining the most fundamental tenets of the society; and of course that arthritic giant, the Soviet Union, which fanatics persist in regarding as the natural or archetypical revolutionary Marxist state. None are democratic. All constrain the autonomy of their citizens in ways that violate liberal conceptions of civil and political rights. But the comparison proposed is not with democracies; it is with authoritarian regimes consecrated to the maintenance (if necessary—as it often is—by unspeakable means) of levels of inequality that in operation exert broad and powerful restraints on human autonomy. Anyone who thinks that human dignity enjoys wider scope and better protection in Guatemala than Yugoslavia must have spent her life screwed to a chair in an otherwise empty room at The Heritage Foundation.

The claim that authoritarian regimes of the left, precisely because they seek to transform frozen societies, are peculiarly resistant to liberty-enhancing revolution is equally without foundation. Though still very tight, party control over the lives of the Chinese population has palpably eased. Moreover, by moving, as they apparently are, to a partially privatized small business sector, and to the substitution of market forces instead of political commands to drive large areas of the economy, Deng Xiaoping and his associates are beginning to open wider spaces for the expression of individual preference.

Yugoslavia, emerging from the horrors of German occupation as a rough, highly centralized autocracy, with Tito as its Stalin, has evolved into what most observers regard as one of the least coercive authoritarian states. Nor does Yugoslavia set the limits of possible evolution. At the time of its displacement by the Red Army in the spring of 1968, the Czechoslovakian Communist party was plainly headed toward the restoration of political competition and the relinquishment of monopoly power. Neither a generation of indoctrination nor the perquisites of power nor the fear of Soviet intervention prevented the emergence, at the apex of the Communist party, of leaders with a passion to open the system. If any counterfactual proposition can be deemed certain, it is that, were it not for invasion, today's Czech government would be a social democracy, the form natural to the country's traditions and its phase of socioeconomic development.[31]

The evolution of Latin America's two extant revolutionary regimes, Cuba and Nicaragua, remains problematic. Revolutionary re-

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gimes founded by a charismatic leader tend to remain frozen in their initial posture until the leader dies or, as in the case of Tito, he himself chooses a new course. The likelihood of that occurring in the Cuban case, or in any other where the revolution confronts a credible external threat, is slight. If Cuba and the United States achieved rapprochement, then a major liberalization of the regime would not be astonishing even during Castro's life, much less after he dies.

Cuba has in place many preconditions of an authentically liberal regime. Its population is healthy and literate and socially integrated. The majority are workers, teachers, and civil servants, the normal constituency of social democratic regimes in developed countries. The army has evolved within a tradition of civilian control, and as a consequence of its experience, ideology, and indoctrination, is closely linked to civil society. So it offers a considerable contrast to the airless, alienated, generally parasitic military institutions endemic to most of Latin America. Finally, most Latin countries, regardless of their present form of rule, aspire to republican government; Cuba, we can be sure, is no exception. And as a country located ninety miles off the coast of Florida, it cannot forever resist the magnetic attraction of a neighboring society devoted to competition and consumption.

Senior party leaders would probably continue to play important political roles in a more pluralistic Cuba. They have ample grounds for confidence in sustained electoral success should they open the political process to competition. There are few governments in the world, democratic or authoritarian, willing to mobilize and arm the bulk of their population. The Cubans are among that few. Though the population now wants more comfort, more individual opportunity, more space for self-expression, the great bulk of those who remain on the Island seem committed to the achievements of the revolution. The men and women who made that revolution would therefore begin electoral life with enormous advantages. Under conditions of immaculate electoral freedom, the Swedish socialist party, unaided by any heroic mystique, won steady electoral majorities for over four uninterrupted decades. With the head start they have achieved, the Cuban revolutionary elite, reconstituted as a democratic socialist party, could well match that record. By contrast, as literacy and urbanization spread, right-wing authoritarian governments, being coalitions of self-aggrandizing military establishments and

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wealthy minorities, cannot face free elections with equanimity unless they have previously succeeded in liquidating the leadership and destroying the institutions of the popular classes.

The fact remains, however, that whatever the immediate achievements of revolutionary elites in enhancing the dignity and autonomy and the physical conditions of the marginal classes, and whatever their capacity for evolution, their initial triumph and subsequent consolidation will be paid for in the coin of human pain. The scope of the desired transformation precludes interclass compromise. The revolution cannot be negotiated.

The awful hostilities generated by civil war tend, in its aftermath, to spill over the constraints of the reconstituted system of justice into merciless vendettas. Moreover, to consolidate the revolution, the new regime must mobilize the popular classes to guard against counterrevolution, and thus entrust power to leaders with neither the means, the training, nor the incentive to achieve an at least rough-and-ready due process. In sum, though there are certainly cases where advocates of revolution can make a strong moral claim for support against an intransigent and ruthless regime, the cost of revolution cannot be casually discounted.[32]

I suppose that for most American audiences, whose selective vision is inimical to revolutionary claims, the caveat is gratuitous. President Reagan warns that, in the event of successful revolutions in Central America, "feet people" will inundate the country's southern border, all the while blithely ignoring the fact that if the United States opened its doors to the Haitian victims of Duvalier's political economy, no one would remain in Haiti other than the butcher, his court, and his thugs. Conservatives conjure images of future bloodbaths as if the forty thousand dead noncombatants in El Salvador were a mere drip.

In subtler cases, even liberals can be myopic. During Peru's first Belaunde Administration, a competitively elected civilian government of the center, the armed forces, in the course of their successful efforts to suppress rural guerrilla movements sparked by or at least associated with peasant land hunger, killed hundreds of Indian peasants. Subsistence farmers with a life expectancy a little over half that of the haute bourgeoisie of Lima, these peasants died because of their passion for land that had doubtlessly belonged to their ancestors and whose redistribution was already favored in theory by a majority of Peru's political elite. The reform bill was stalled in a Congress riven

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by personal feuds and manipulated by a tiny landed elite that exploited to the full its wealth and prestige. It remained stalled until the armed forces suspended party politics, promulgated even more sweeping reforms, and implemented them before landowners could complete the decapitalization of their estates that had been initiated in anticipation of the congressional reforms.

Admittedly, the areas where the massacres occurred were remote. Admittedly, they occurred before the international human rights movement had developed to the point where it had become a force capable of driving issues onto the diplomatic agenda and into the minds of the media. Yet the mild reaction of Western liberals and moderates to news of the killings hints at an almost visceral inability to perceive the degree of official violence that can coexist with a politics of electoral competition.

VII

Land redistribution was the most celebrated and apparently the most enduring of the reforms managed in Peru by the government of General Juan Velasco Alvarado.[33] The regime's declared purposes were to break the hegemony of the old landed oligarchy, promote national integration, reduce dependency on foreign centers of economic power, improve the distribution of wealth, and accelerate the process of economic modernization. In the course of its seven-year tenure, it decreed sweeping changes in the structure of industry and the press similar in character to those carried out by General Hernández in my hypothetical Golfo Profundo, changes that did not proceed very far while Velasco held power and that did not long survive his fall.

Whether, as some commentators argue, the net effect of General Velasco's effort to impose reform has, despite its many failures, enhanced the authentically democratic potential of Peruvian politics is an issue beyond the scope of this essay. As I suggested earlier, what interests me primarily here is whether attempts like the Peruvian one to alter quickly and decisively a highly unequal distribution of social power and personal welfare must inevitably come into conflict with human rights norms. Or, conversely, can and should those norms be construed in ways that provide space for egalitarian reform?

My conclusion is that they can and should—if the reformist or revolutionary project passes two threshold tests. First, it must fully

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respect those rights that, according to the constitutive legal documents and our regnant moral consensus, cannot be qualified or suspended under any circumstances. I refer, of course, to the rights to life, to freedom from brutal treatment during arrest, interrogation, detention, or at any other time, to due process of law, to the free exercise of religious belief, to freedom from discrimination on the basis of race, sex, creed, or culture, to free opinion, and finally, the right to maintain the autonomy and integrity of the family unit. Second, it cannot regard the sudden, sharp concentration of power generally required to carry out radical reforms as anything more than a brief transitional expedient. Prolonged suspension of political competition would be clear evidence of bad faith on this account.

A revolutionary government satisfying these threshold conditions should be able to carry out its vocation without conflict with human rights norms. For example, the American Convention on Human Rights simply requires "just compensation" where property is expropriated and adds, moreover, that "the law may subordinate . . . use and enjoyment [of property] to the interest of society." Partial compensation, progressive income taxes, a bias toward the poor in the allocation of public works, and subsidized credit seem to me equally legitimate methods for promoting social justice and national development. They are, as well, means for realizing the rights consecrated in the American Declaration on the Rights and Duties of Man that was unanimously adopted by the member states of the Organization of American States in 1948. Article XIV of the Declaration recognizes that "every person has the right to work [and] to social security which will protect him from the consequences of unemployment, old age and disabilities arising from causes beyond his control."

General Hernández's effort to break the oligarchy's control of Golfo Profundo's mass media also should survive normative assault. Nothing in the American Convention equates untrammeled private ownership with "Freedom of Thought and Expression." On the contrary, Article XIII condemns restraints on the exercise of this freedom even if they emanate from the private sector: "The right to expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies . . . or by any other means tending to impede the communication and circulation of ideas and opinions."

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The human rights norms of this Hemisphere codify not the practice of governments, but the ideals governments feel compelled to concede. As such, these norms are no obstacle to revolutions that seek, by means respectful of fundamental rights, the more equal distribution of power, wealth, and freedom.

ENDNOTES

[1]American Declaration of the Rights and Duties of Man, adopted by the Ninth International Conference of American States, Bogota, 1948; American Convention on Human Rights, signed at the Inter-American Specialized Conference on Human Rights, San Jose, Costa Rica, November 22, 1969, entered into force on July 18, 1978 (having in that year obtained the requisite eleventh ratification), and as of September 1983, ratified or adhered to by seventeen member states of the Organization of American States. States not parties to the Convention are subject to, in most respects, equivalent provisions of the Declaration (See Article 20 of the Statute of the Inter-American Commission on Human Rights of the OAS, hereinafter cited as IACHR). The Declaration, the Convention, the Statute, and the Regulations of the Commission, plus the Statute of the Inter-American Court of Human Rights, are contained in the *Handbook of Existing Rules Pertaining to Human Rights,* published by the OAS.

[2]The inspiration for this scenario stems in part from Terry Karl's description of the 1957-58 transition to democracy in Venezuela in her working paper for the Latin American Program of The Woodrow Wilson International Center for Scholars, "Petroleum and Political Pacts: The Transition to Democracy in Venezuela" (no. 107, 1981).

[3]The sixteen-year power-sharing agreement is obviously based on the Colombian arrangement, The National Front, which restored civilian rule after the terrible *violencia* of the 1940s and 1950s, and the resulting military government of General Rojas Pinilla. For a useful description and evaluation of The National Front, see *The Politics of Compromise,* edited by R. Albert Berry, Ronald G. Hellman, and Mauricio Solaun (New Brunswick, New Jersey: Transaction Books, 1980).

[4]When the IACHR arrived in Buenos Aires in September 1979, we were informed that during the prior two years, when people were being picked up all over the city, never to reappear, not one of the city's Spanish-language newspapers published any reports about this phenomenon. No formal governmental directive commanded their silence.

[5]When the IACHR visited El Salvador in January 1978, I was struck by the uniform approach to that country's impressive human rights problems taken by the leading newspapers, both in their "news" and their "editorial" pages. In essence, they seemed resolutely insensitive to the existence of any human rights problems.

[6]The rules governing observations in loco are contained in Chapter IV of the Commission's Regulations.

[7]Rather as in the United States, Latin American social security systems have evolved incrementally, reflecting ad hoc elite concessions to politically mobilized groups rather than a general functional or ethical conception of public responsibility to ease deprivation.

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[8]For Peruvian efforts to promote worker management, see Peter T. Knight, "New Forms of Economic Organization in Peru: Toward Workers' Self-Management," in *The Peruvian Experiment,* edited by Abraham F. Lowenthal (Princeton: Princeton University Press, 1975), pp. 350-401.

[9]Peru's reformist military government (1968-74) seized the country's leading daily newspapers for the declared end of creating "an authentically independent press." A useful analysis of the problematic consequences is Dennis Gilbert's "Society, Politics, and the Press," *Journal of Inter-American Studies and World Affairs,* August 1979, pp. 369-92.

[10]The tribunals established by the government of Nicaragua, following the overthrow of the Somoza regime, to try persons accused of crimes allegedly carried out on behalf of the deposed regime had a somewhat similar structure.

[11]Article 8. *Right to a Fair Trial.* Paragraph 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

[12]Article 21. *Right to Property.* 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society. 2. No one shall be deprived of his property except upon payment of just compensation, for reasons of public utility or social interest, and in the case and according to the forms established by law. 3. Usury and any other form of exploitation of man by man shall be prohibited by law.

[13]Article 23. *Right to Participate in Government.* 1. Every citizen shall enjoy the following rights and opportunities: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and (c) to have access, under general conditions of equality, to the public service of his country. 2. The law may regulate the exercise of the rights and opportunities referred to in the preceding paragraph only on the basis of age, nationality, residence, language, education, civil and mental capacity, or sentencing by a competent court in criminal proceedings.

[14]Cf. *No Easy Choice,* by Samuel P. Huntington and Joan Nelson (Cambridge: Harvard University Press, 1976), p. 22: "If the bourgeois model is followed [in the early stages of industrialization], political participation is expanded to encompass the urban middle class and economic growth proceeds reasonably rapidly. Economic inequality also increases, both as a concomitant of economic growth *and as a result of the utilization by the middle class of its political power to further its own ends.*" (italics added)

[15]See, for example, OAS General Assembly Resolution 371, adopted July 1, 1978, in which the Assembly resolved: "5. To reaffirm that, in the search for economic and social justice, human dignity and the freedom of the individual as expressed in the American Declaration of the Rights and Duties of Man must be preserved and the rule of law respected. 6. To reaffirm the conviction that there are no circumstances that justify torture, summary execution, or prolonged detention without due process of law, and to deplore these transgressions, which would violate the fundamental rights of man."

[16]On the fall of Chilean democracy, see Arturo Valenzuela's "Chile," in *The Breakdown of Democratic Regimes,* edited by Juan J. Linz and Alfred Stepan (Balti

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more: Johns Hopkins University Press, 1981); and Paul Sigmund, *The Fall of Allende* (Pittsburgh: University of Pittsburg Press, 1977).

[17]Karl, "Petroleum and Political Pacts."

[18]Within the large and still growing literature on the interplay of politics and economics in contemporary Latin America, two high points are *The New Authoritarianism in Latin America,* edited by David Collier (Princeton: Princeton University Press, 1979) and Alain de Janvry, *The Agrarian Question and Reformism in Latin America* (Baltimore: Johns Hopkins University Press, 1981).

[19]Hollis Chenery, et al., *Redistribution with Growth: Policies to Improve Distribution in Developing Countries in the Context of Economic Growth* (Oxford University Press, 1974).

[20]See, for example, Simon Kuznetts, "Economic Growth and Income Inequality," *American Economic Review,* March 1955, p. 45: "Widening in the early phases of economic growth when the transition from pre-industrial to the industrial civilization was most rapid; becoming stabilized for a while; and then narrowing in the later phases." Quoted in Sylvia Ann Hewlett, "Human Rights and Economic Realities," in *The Future of The Inter-American System,* edited by Tom J. Farer (New York: Praeger, 1979), p. 86.

[21]Susan Eckstein, "Revolution and Redistribution in Latin America," in *The Peruvian Experiment Reconsidered,* edited by Cynthia McClintock and Abraham F. Lowenthal (Princeton: Princeton University Press, 1983), p. 359.

[22]Kuznetts, "Economic Growth and Income Inequality."

[23]Harry Johnson, *Money, Trade and Economic Growth,* p. 153: "There is likely to be a conflict between rapid growth and an equitable distribution of incomes and a poor country anxious to develop would probably be well advised not to worry too much about the distribution of income." Cited by Hewlett, "Human Rights and Economic Realities," p. 27.

[24]Hewlett is typical. See generally ibid. and her book *The Cruel Dilemmas of Development: Twentieth Century Brazil* (New York: Basic Books, 1979).

[25]An unpublished paper prepared for the Inter-American Commission on Human Rights.

[26]On the development of the Cuban economy, see Carmelo Mesa-Lago, *The Economy of Socialist Cuba* (Albuquerque, N.M.: University of New Mexico Press, 1981) and Jorge I. Dominguez, *Cuba* (Cambridge: Harvard University Press, 1978), pp. 173-90, 383-91.

[27]The amount of the subsidy has varied over time, and the subsidy has assumed a variety of forms—which is one of the reasons estimates of the extent of the subsidy are both rough and problematical. See generally, Mesa-Lago, *The Economy of Socialist Cuba,* pp. 186-87 and Dominguez, *Cuba,* pp. 149-59. To put the Soviet subsidy in some perspective, U.S. grant aid to the State of Israel for fiscal year 1983 is $1.485 billion. Israel's population is approximately one third the size of Cuba's.

[28]For a concise description of the Organs of Popular Power in operation, see Elden Kenworthy, "Dilemmas of Participation in Latin America," *Democracy,* Winter 1983, pp. 72-83.

[29]See, for example, Oscar Lewis, *The Children of Sanchez* (New York: Random House, 1961).

[30]See "Dictatorships and Double Standards," *Commentary,* November 1979, p. 34; my critique of Kirkpatrick's manipulation of the authoritarian-totalitarian distinction appears in *The New York Review of Books,* March 19, 1981.

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[31]See James R. Kurth's remarkably perceptive essay "The United States and Central America: Hegemony in Historical and Comparative Perspective," in *Central America: International Dimensions of the Crisis*, edited by Richard E. Feinberg (New York: Holmes & Meier, 1982), pp. 39-57. He compares the hegemonic crises experienced by the Soviet Union and the United States growing out of the changing political telos in their respective spheres of influence.

[32]For a sophisticated, systematic effort to test the human rights balance of the Cuban revolution, see Jorge I. Dominguez's essay "Assessing Human Rights Conditions," in *Enhancing Global Human Rights* (New York: McGraw Hill, 1980s Project/Council on Foreign Relations, 1979), pp. 21-116. A less systematic but equally interesting effort to sketch a moral calculus for the whole process of political and economic development is Peter Berger's *Pyramids of Sacrifice* (New York: Basic, 1974).

[33]For diverse assessments of the Velasco regime's achievements, see McClintock and Lowenthal, *The Peruvian Experiment Reconsidered.*

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Warren Weinstein

Human Rights and Development in Africa: Dilemmas and Options

HUMAN RIGHTS ARE A COMPLEX yet fundamental aspect of all human society. At their very basic formulation, they represent each individual's claim to dignity of person and fair treatment. In this paper I propose to explore the observance of human rights in contemporary Africa and the dilemmas associated with these rights. Although traditional African societies enjoyed many of the human rights that are today enshrined in the United Nations Covenants,[1] postindependent African states—which are larger in size and wider in scope than the precolonial village and empire—face new challenges with regard to these rights. Most notable among these are the concentration of power without adequate countervailing safeguards; the fissiparous tendencies of the many different ethnic and cultural groups that make up their populations; the personalization of power and its extension into domains created by the modern state and a money economy; underdevelopment, with its limited opportunities, creating a class of migrants and refugees, and a growing population pressing the state for services it is ill-equipped to provide; and the search for viable political and economic institutions.

These challenges render the new states extremely fragile, and it is this very fragility that limits the extent to which human rights exist and are enjoyed. Development and political stability in Africa will depend ultimately on finding ways to strengthen these fledgling states and to expand respect for human rights. Although the United Nations has two separate covenants for civil and political rights, and for economic, social, and cultural rights, the assumption underlying this

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paper is that the various categories of rights are additive and not mutually exclusive. Hunger does not cease just because a ban is imposed on freedom of speech or political participation.[2] When privileged groups enjoy civil and political rights while vast parts of the general population cannot provide for their own basic needs, the conditions exist for social unrest that can topple the system and vitiate the rights enjoyed by the few. Development is not merely growth; it involves as well a general improvement in the well-being of a country's entire population—improvement in the economic and social circumstances of all members of the society, as well as the right to participate in the political process. The key dilemma confronting the states of Africa is to find a way to expand participation in the political process and to associate the disparate groups in the development of the state without falling prey to the disintegrative tendencies of ethnic and tribal rivalries and the entrenched family interests that mire government and bureaucracies in corruption and nepotism.

II

In the fall of 1982, the two houses of Nigeria's legislature ratified the African Charter on Human and Peoples' Rights adopted unanimously in June 1981 at the summit meeting of the Organization of African Unity in Nairobi, Kenya.[3] This brought to twelve the number of African states that have thus far accepted the Charter, and reflects the importance that human rights are assuming in African regional affairs. The distance between the adoption of a statement of principles on human rights, however, and the observance of these rights remains very great on the African continent. In the debate on the Charter, one Nigerian in the House of Representatives noted that in "the Republic of Guinea, . . . over two thousand people, including the first Secretary General of the OAU, Diallo Telli, were executed purely on political grounds. . . . The situation now in Zaire is even worse than in any other place." A Nigerian senator commented,

> You come up with a Charter that respects human rights in a continent where we imprison each other with relish, where political opponents are liquidated, where an Idi Amin has just left the scene, where Guinea is just coming out of its period of introspection, of expulsion of nationals that go against the regime.[4]

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As for their own country's shortcomings, various Nigerian legislators cited ethnic favoritism and inadequate attention to the needs of the elderly and the disabled.[5]

In an article on preventive detention published in 1979, Ghanaian lawyer John K. Ebiasah concluded that, since independence, "the governments of black African nations, with few exceptions, have engaged in a systematic erosion of the fundamental rights and freedoms of their citizens. Most have adopted bogus ideologies and rationalizations in support of political persecution, intimidation and subterfuge." Ebiasah quotes Nigeria's first president and political leader, Nnamdi Azikiwe:

> I am sorry that Dr. Danquah died in a [Ghanaian] detention camp. I wish he had been tried publicly, told what offence he was alleged to have committed, and given a fair opportunity to defend himself. I am of the considered opinion that if independence means the substitution of an indigenous tyrant for alien rule, then those who have struggled for independence of former colonial territories have not only desecrated the cause of human freedom but [have] betrayed their peoples.[6]

Only three years elapsed between publication of Ebiasah's article and the Nigerian legislature's adoption of a human rights charter, too little time to argue that the precarious state of human rights noted in 1979 had improved at all significantly. The Nigerian legislators cited above undoubtedly had this in mind when they commented on the irony of adopting the Charter when the observance of human rights is so weak. In essence, this is part of the dilemma of human rights in contemporary Africa. On a continent where most individuals remain deeply attached to ethnic loyalties and ties, where family is a more important consideration than the nation, and where bureaucracies more often than not stand in the way of citizens' rights, the call to observe human rights raises many doubts.

African interest in human rights is relatively recent. In the days before independence, emergent African leaders used human rights claims to legitimize their demand for an end to European rule. At that time they did not distinguish between categories of rights, but insisted on political, civil, cultural, social, and economic rights for all Africans. Once independence was granted or won, however, it soon became apparent that although human rights claims had been used

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by individuals and groups to achieve power, the granting of these rights to the people did not necessarily follow. The mere achievement of independence had become an end in itself, and once gained, the new leaders focused on consolidating their personal power and their ability to control the new state. In most cases, those who gained control represented merely a part—frequently a minority—of their state's population. In only a very few cases, moreover, could it be said that the people granted power to their leader. As Arthur Lewis observed, Africa's leaders in general seized power, and the hostility that most of them aroused led to suppression. The new heads of state went to great lengths to prevent criticism, and most often established a single party that rested "on its claim to accelerate development and to contain its tensions."[7]

In the first years after independence, most of the leaders referred to themselves as African socialists. They dismissed any criticism of the lack of opposition and free discussion by claiming that African socialism was a resurrection of precolonial traditions of communal ownership of property, egalitarian society, and emphasis on cooperation, consensus, and the social obligation to work.[8] The nation-state was viewed as an extension of the traditional African extended family, with a lineage head who acted on behalf of a mythical collective will. African socialism never achieved any very rigorous ideological content, and it was invoked by so many different leaders to mean so many things that no single definition of it can be given. What can be said, however, is that it evolved into an ideology that claimed development as the primary goal of the new states, and sanctioned the imposition of discipline and unity of purpose to achieve that end. Opposition parties, open criticism of policies, and the devolution of power are, according to African socialism, unnecessary and counterproductive. In effect, African socialism was a response to the very deep-seated problems of the new states. Foremost among these were the artificial nature of the states, which were often composed of ethnic groups that did not agree to collaborate and that were at times traditional enemies; populations that felt little identity with the new symbols of nationhood; and a very low level of development of the physical infrastructure and local human resources. Finally, most of the African states that achieved political independence were still heavily dependent economically on the former colonial power.

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For most of Africa's leaders, human rights were a topic of debate at the United Nations and an instrument to be used against vestiges of colonial rule and European domination on the continent, but not a universal set of standards to be applied to themselves. Their argument ran somewhat as follows:

> We, too, would like to provide our people with the rights of liberal democracies. But that's easier said than done. After all, the most basic human right is the right to life itself. In my country people die because they don't have clean water, enough good food or basic medical care. Those are our priorities. If we have to silence or imprison those who would seek to undermine our unity and our goals, then so be it.[9]

Although this argument carried some weight during the 1960s and well into the 1970s, Africans themselves are now concerned that the curtailment of human rights to achieve national unity and development has failed to meet the test of time. Human rights have suffered significantly in Africa, and not only is there little development to show for this, but national unity itself is threatened in many African countries. The state of the economy in many of the continent's new states is dismal, certain of these countries can no longer produce enough foodstuffs for domestic consumption, most have failed to achieve stable political and economic institutions, and the coups, civil wars, and social upheavals of the past two decades have swollen the ranks of refugees to between 4 and 5 million.[10]

In states where the leadership cites the restriction of civil and political rights as an important factor in the country's development, the results fall far short of the claims. In Tanzania, President Nyerere's version of African socialism, Ujamaa, imposed single-party rule and forcibly resettled farmers in villages. Although the government did encourage villagization to rationalize the delivery of social benefits, Nyerere's disdain of human rights compounded further the manifold problems brought on by the country's poverty and underdevelopment. According to Michael Lofchie, "there is compelling reason to believe that the program of collective villagization was the major cause of a crisis in agricultural production of calamitous proportions."[11] Government policies demoralized the farmers and denied them both a voice to articulate this and a mechanism through which they might seek redress. In spite of its history of failure, the Tanzanian regime has continued to curtail civil and political rights, and to

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deny economic rights. The results are that, despite large infusions of foreign aid, the black market, crime, and corruption are worsening, and the country is becoming increasingly unstable politically. By March 1983 the government was beginning to develop a "siege mentality," and lacking the foreign exchange necessary to import the material to provide for the social and economic well-being of its people, again resorted to compulsion in some areas to force farmers to grow the cash crops on which the economy depends.[12] Symptomatic of growing dissatisfaction with the regime's performance was a coup attempt in December 1982 and reports of disturbances among the military. If the regime were overthrown, its passing would go unmourned by the majority of the population. President Nyerere's policies have failed to create national unity and have served instead only to estrange the people from government programs while preventing them from contributing to their own and their country's development.

The case of Ethiopia, too, suggests that disrespect for basic human rights does not necessarily promote development or nation-building. After the overthrow of Emperor Haile Selassie, the PMAC (Provisional Military Administrative Council), the new ruling body, justified ad hoc violations of human rights as necessary to achieve a program of development aimed at the general well-being of all of the country's people. Ironically, the very cadres upon whom development depends are those whose civil and political rights suffered abridgement, and they are now working *against* the regime. Furthermore, excessive government-sanctioned institutional violence has induced social drift and conflict. Here, development is the immediate loser, since the population is distracted from economic pursuits to the more fundamental need to protect one's family and personal safety. Marina Ottaway concluded that the military in Ethiopia initiated a movement to restructure the entire society, but the new political system is as detached from Ethiopian society as the former system under the emperor. She suggests that as a result of the widespread institutional violence, the revolution begun by the Derg, a military junta, remains incomplete, and that the political system may thus degenerate into a top-heavy centralized state out of touch with the very people it claims to help. The traumatic brutalization of Ethiopia's aristocracy and urban elite could not be contained, and violent confrontation between different groups has become the norm. Cer-

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tainly, according to Ottaway, abridgements of civil and political rights have done little to help the Derg achieve promised goals in economic development. It has not been able to mobilize successfully the "millions of tenant farmers and small plot peasants who were still paying feudal dues under the old system."[13] Ethiopia is wracked by civil war, and the government has lost control in nine of its sixteen provinces. The country has become more and more dependent on outsiders, and whatever development had been achieved in the past is being lost as the government is "obliged to spend an increasingly large part of the Gross National Product on building up the coercive apparatus of the state."[14]

The inability of African regimes to rise above ethnicity and primordial ties has impeded development and contributed to an environment in which human rights have tended to be violated as well. The exclusion from positions of authority of individuals outside the leader's own ethnic group or region has closed off a significant pool of trained manpower in situations where there are already too few who are adequately trained. The failure to allow for criticism has hurt development because the continent's "best brains . . . either turn sycophants or seek their fortune abroad."[15] Costs are incurred as people increasingly avoid decisions and as farmers become apathetic to government appeals and programs. Guinea is a glaring example where development and national unity are being impeded by a regime that claims to curtail rights in the name of development and unity. Officials in Guinea refrain from criticizing inappropriate and wasteful investments, ill-conceived policies, and poorly designed project proposals. Almost none of the civil servants criticize openly mismanagement and corruption, and avoid calling attention to problems with policy and project implementation. Because officials fear the unintended consequences of decision-making, there is little actual management of policy, programs, and projects, and in many cases, this creates a void. The financial losses and economic hardships that result from these shortcomings restrict further the limited resources available to provide government services, pay for needed imports, and maintain payments on external loans. In a search for additional revenues, the government seeks to extract more resources from the local population, most of whom live in rural areas and engage in agriculture. Official efforts to take more from this segment of the

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population further alienates the farmers who are already suspicious of government initiatives and programs.

As noted by Lansine Kaba, violations of human rights have "created a deep sense of insecurity among those who are still living and have taught them to be prudent."[16] Many Guineans have voted with their feet, and a fifth of the population lives in exile. As in other African countries where the local populations withdraw from national life as much as possible, the regime in Guinea has become increasingly dependent on outside experts and supports. The more the leadership resorts to repressive means, the less the leader trusts any but his fellow ethnics—and eventually, not even them. The next logical step is to bring in outside experts who pose no threat since they do not speak the local language and have no local following. The country's development is thus inevitably made more dependent upon outsiders and outside forces, negating, ironically, the very independence obtained only two decades ago.

III

The comments quoted earlier in this paper, singling out Zaire as a state where human rights have fared rather poorly, were made to depict the weakness of the 1981 OAU Human Rights Charter, because many of the problems that stand in the way of its observance can be found there. The country has had very little success in creating a political system able to manage conflict or promote development.[17] Its postindependence history has been one of the pauperization of the great majority of its people: a vicious circle has developed in which "rural stagnation feeds upon coercion, and the likelihood of coercion increases in proportion to the levels of exploitation tolerated by the state."[18] Zaire's rulers give little appearance of caring about development, and their method of governing, which has been described as a "kleptocracy"—the institutionalization of corruption and pilfering as the pervasive mode of behavior, public and private—has contributed to the country's prolonged political, social, and economic decay.[19] The case of Zaire is not an exception in Africa, and suggests not only that the price paid for the failure to observe human rights is a high one, but also that finding a way to create the basic elements of national cohesion and a consensus upon which a more positive human rights record might be established is far from simple.

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For more than six decades the modern state of Zaire appeared on maps of Africa as the Belgian colony of the Congo. The very vastness of the territory made efficient rule impossible, and thus the colony was divided into six provinces, with each governed as a separate entity. The physical structure was more developed in and around the colonial capital of Kinshasa, in the mineral-rich south, and in the east, with its abundant agriculture. Under colonial rule, certain groups received favored treatment and thus interacted more widely with their colonial masters; this led inevitably to uneven development and regional jealousies, which the Belgians, as part of their policy of divide and rule, encouraged. Their aim was to avoid unity among the colonized to prevent the formation of any broad-based movement that might menace the colonial apparatus or elude its control. Life in the colony was undemocratic and authoritarian, with Belgians deciding the path that social and economic development would take. Africans were excluded from politics and from responsible participation in the administration of the colony,[20] and were allowed no part at all in deciding their own fate. They were wards of Belgium, they were told, and not adequately matured in the ways of the West to govern themselves.

The European statesmen who established the borders of the Belgian Congo in the nineteenth century were quite ignorant of the area's human geography. As a result, the frontiers of the colony cut across ethnic boundaries, and when it achieved independence, it did so as a quite artificial entity. The cultural traditions encompassed by Zaire's very heterogeneous population vary greatly: they span the spectrum of political systems, from compact bureaucratic and highly stratified societies to loosely organized kingdoms and communities where the highest level of organized authority was the lineage chief. The Belgians were aware of the differences that marked off the colony's indigenous societies, but for their own purposes, did little to promote a sense of loyalty and commonality of purpose among them. The inhabitants of the Belgian Congo—and later Zaire—remained organized predominantly along family and ethnic lines, and the various groups often viewed each other as traditional rivals if not enemies.

The movement to independence came as a sudden surge, beginning in 1956, when a number of Africans educated by the Catholic Church and influenced by the more advanced political development

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occurring in the French Congo, just across the Congo (now the Zaire) River, asked that the inhabitants of the colony be allowed to participate in the political and administrative life of the territory. By 1959 their demands had grown in magnitude, and a number of Congolese formed ethnic political associations or organized into more issue-oriented groups. The Belgian administration failed to respond to African demands either adequately or in good time, and the mounting political tension soon burst into urban violence. The government in Belgium panicked; without any preparation or forethought, it decided to grant independence as soon as possible. As a result, the fractionation that had been kept in check by colonial rule exploded, and the new country of Zaire suffered through seven long years of civil war and anarchy.

Both the lack of political experience among Zairians and ethnic and regional rivalries inhibited efforts toward creation of a broad coalition under whose authority a national structure might have emerged. Moreover, external powers, attracted by the country's extensive natural resources, were drawn into Zaire's domestic power vacuum. Almost immediately upon achieving independence, Zaire became a theatre for East-West confrontation. The only national institution was the army, but it had been officered by Belgians, and at independence the Belgians lost control. The army very quickly disintegrated into a rabble. Within a very short time the United Nations sent in troops to help restore order, and until 1964, Zaire was in effect recolonized by outsiders.[21]

The seven years of civil strife from 1960 through 1967 brutalized the population in the cities and countryside. Under these conditions, primordial loyalties to family and ethnic group became the overriding factor in how Zairians related to one another. The shift from traditional tribal societies to a huge heterogeneous entity—the national state—thwarted any hope that independence might draw upon traditions and values found in Zaire that could have fostered a regime more committed to human rights. What has proved to be an intractable problem for Zaire has been so for many other African states as well: the individual traditional units that after independence were incorporated into national states all had values congenial to consensual politics in which human rights might fare well, and mechanisms to facilitate compromise as well, but these have not carried over successfully to the larger national state. By way of example, a

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Zairian participant at one African human rights colloquium mentioned the limitations on the traditional chief's power exercised by village elders, the right to a fair hearing, the use of witnesses prior to rendering judgment, and other practices that today might fall under the rubric of civil and political rights. Other Zairians have pointed this out, and have indicated that in traditional societies there were also elements of economic and social rights: the obligation of traditional leaders to look after the welfare of the community and its individual members, the right to property, and the right to the fruits of one's labor.[22] None of these rights receive much respect in Zaire today.

The situation in Zaire stabilized to some extent after the military coup that brought Colonel Joseph Mobutu (now Mobuto Sese Seko) to power in 1965. The years of violence and corruption, however, had led to a general privatization of government and public administration, and the Mobutu regime was unable to reverse this trend. By the end of its first decade in power, the privatization of government and the denial of economic rights to the people had led to a significant decline both in their participation in the country's political affairs and in the national economy.[23]

To its credit, the Mobutu regime did achieve a sense of national identity for Zairians in that secession no longer seems a viable alternative to the country's disparate elites. By the early 1970s, despite the rampant corruption, there was a growing acceptance of the idea that Zaire should form a single political unit. From 1967 through the early 1970s, high world prices for copper improved Zaire's economic situation. President Mobutu used the profits from the sale of copper and other natural resources to launch a number of prestige projects and grandiose development schemes, and to buy off internal opposition and woo back several key opposition figures who had fled the country. Mobutu also developed a strategy of shifting political figures from the various regions and ethnic groups in and out of power. As a result, he enabled the various constituent groups of Zaire to benefit from the corruption and to have access to economic rewards.

In 1973-74, copper prices dropped precipitously, and President Mobutu found himself without adequate resources to continue buying popular support and to co-opt his opposition. The regime became increasingly distrustful of individuals not closely identified with the head-of-state and his native region. This reaction engendered re-

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sentment among outsiders, chiefly Zairians from the southern province of Shaba. In 1977 and in 1978, Shabans revolted unsuccessfully against the regime. There were other uprisings and several attempted plots to overthrow the regime. The cumulative effect of all these events was to erode any sense of security that the regime had built up, and to create a siege mentality and political paranoia among Mobutu and his close associates. This led to increased repression, which in turn sparked renewed violence and a further breakdown in the ability of the regime to govern. The country became increasingly dependent upon outside experts and infusions of foreign aid and finances. It is not surprising that in such a situation, none of the categories of human rights has fared well. Zaire has become increasingly chaotic, its physical infrastructure is suffering from extreme neglect, and there is a deep cynicism about politics and the intentions of Zaire's elites.

That the almost total absence of human rights poses serious dangers to the regime's survival has not gone unrecognized by the Zairian leadership. In 1977-78 there were administrative reforms, and a parliament was elected by national suffrage in October 1977. During 1978 the legislature exercised its right to question ministers and delved into alleged administrative deficiencies and corruption. The Shaba revolt in 1977 and the invasion-uprising in Shaba in 1978 led to a quick reversal in official attitudes toward the Parliament. The regime felt too insecure to allow popular criticism, and in January 1981 thirteen parliamentarians were arrested for writing a letter critical of the regime. Many Zairians were arrested in 1981 for being in possession of the letter.[24] The legislature's powers and importance were diminished considerably during the same year, undercutting what had been heralded as the regime's effort to bring about more popular participation in the political process. Mobutu's reaction to crises has been to retreat further into the more limited universe of his family and co-ethnics. The increased emphasis given these primordial ties highlights their continued importance, and this is characteristic of the way many other African political leaders react to problems. The leader's reliance on family and fellow ethnics results in the exclusion of others, and places critical limits on the ability of African leaders to develop institutions that take into account the human rights of those who are outside their family and ethnic group or region.

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The Zairian experience has been one of "reverse development": a deterioration of the physical infrastructure and public services, and a steady return to subsistence agriculture in rural areas. The breakdown of the economy in the countryside has led to food shortages, and Zaire has moved from being an exporter of foodstuffs to a major importer. In urban centers, health conditions have worsened, and there has been a significant increase in the incidence of deaths associated with malnutrition and a poor diet. The pervasive corruption involves daily extortion from the urban and rural populations of what little they have, earn, or produce. Often it is Zaire's undisciplined army that perpetrates the extortion, but it is not unusual for local petty officials also to resort to extortion because they are not paid on time—if at all. The absence of economic rights has turned many away from participation in both the national economy and the regime, and there is a growing dependency on expatriates by the national leadership and a growing paranoia among the political leaders, whose overriding goal is to remain in power to continue benefiting from the fruits of corruption. Repression and a deepening popular resentment have become the hallmarks of Zaire's political process.

The absence of a homogeneous population, the lack of a national consensus, and the primacy of ethnicity and family ties all play a part in Zaire's inability to develop institutions to protect basic human rights. The experience of Zaire raises the question whether respect for these rights in the African context of fragile and frangible states might in fact impede the process of nation-building. If a specific national culture does not yet exist, if most African states are artificial units, then is it unrealistic to be anything but skeptical about the potential for respect of human rights in these countries. Given the pervasive poverty and lack of development, can one expect African regimes to make an effort to promote human rights with their very limited means and at the risk of opening up a pandora's box of conflicting demands over often very meager resources? There is no simple answer to these questions, although we can say that neither development nor the process of nation-building seems to thrive in those African states where human rights are observed more in the breach than in practice.

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IV

Nigeria and Senegal may well be two exceptions to the general trend in Africa, in that in both states the political leadership has tried to develop institutions that respect basic civil and political rights. In each case the leadership has considered that the processes of nation-building and development are better served by the observance of human rights, and this may be a challenge to those African leaders who cite the inherent dilemmas of human rights as reasons for denying them. Both Nigeria and Senegal have heterogeneous populations, although Nigeria more so than Senegal. Both states are undeveloped, suffer from pervasive poverty, and have bureaucracies whose members are geared to family considerations and urban living. In addition, corruption in Nigeria is so extensive that it risks destroying the current experiment at a more open and competitive political system.

It is not yet possible to predict whether all segments of the population stand to benefit from the development in Senegal and Nigeria of institutions to protect civil and political rights. Nor is it possible to forecast whether the promotion of human rights will reach into the realm of economic and social rights as enshrined in the United Nations Covenants. Given the very limited economic, financial, and human resources available to Senegal's government, and the very serious constraints posed by a large population in Nigeria, it may well be that the promotion of civil and political rights will not extend to economic and social rights. Public assertions by Nigerian and Senegalese leaders testify to their commitment to promote these rights, but to date there is little evidence that these assertions will ever become a reality.

In the twenty-two years since Nigeria gained independence from Great Britain, "its political history has encompassed a parliamentary/republican system of the Westminster 'export model'—with a model bill of rights; a succession of military governments (which initially claimed to be constitutionally installed); one of the major civil wars of this century . . . ; [and] a protracted exercise in preparation for" and an actual return to civilian rule.[25] Yet throughout these years there has continued to be strong support for observance of civil and political rights, and recognition that these rights are essential to nation-building and to development.

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A study of public attitudes toward government in Nigeria suggests that in the 1970s the belief that human rights are additive was growing. Much of Nigeria's downhill slide, ending in emergencies, coups, civil war, and political assassination, occurred at tremendous economic, social, and political costs, and was "the result of failure to establish or maintain more than the illusion of constitutionalism . . . and [a] continuing inability to establish public confidence in part by respecting a sense of the working limits of power." The researchers found a "clearly expressed preference of Nigerians . . . for equitable and humane treatment, over rapid growth per se."[26]

Since independence, the social and ethnic divisions of Nigeria made it difficult to govern the country without first achieving a consensus about the political ground rules and without allowing a wide range of groups to share in the exercise of power. Even in the absence of civilian rule, these factors argued for a wide range of civil and political rights. The military regime did not torture its opponents, and the 1978 State Department report on Human Rights notes that the army "achieved noteworthy success in bringing about national reconciliation and reintegration of secessionist elements" in the years following the civil war. The judicial system operated in certain instances to protect civil and political rights.[27] According to the report, in one case where there had been invasion of the privacy of the home, "the government's action [was under challenge] . . . in the courts, which can and do rule against the government."[28] This latter point is important because respect for "the rule of law" and for the judiciary has been a significant value shared by the Nigerian elite since colonial days. This also has its roots in the southern Nigerian penchant for litigation, as it was a part of African tradition in a number of local societies before and during colonial rule.[29]

The vitality of the Nigerian commitment to civil and political rights was most in evidence during the three years of debate over the 1976 draft of the Nigerian Constitution, which entered into force on October 1, 1979, with the installation of a civilian government. Some highlights of the debate were the draft's failure to provide adequate protection for freedom of the press, the continuing controversy over the creation of Islamic Shariat courts, and the idea of a strong executive based on the model of the American president. Some Nigerians expressed deep reservations about the concentration of power in the office of the president "in a society full of clannishness."[30]

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During the debates, the many ethnic minorities in Nigeria were strongly in favor of a representative presidential system, arguing that this system would make it possible for minorities "to use their collective weight in defense of their interests."[31] Minorities also favored the creation of states as a way to gain a political voice in national politics and to ensure their own access to the Nigerian budget.

The 1979 Nigerian Constitution not only contains civil and political rights, but also refers to fundamental principles of an economic and social nature that are not considered to be justiciable. In Chapter II there is "a statement of political, social and economic objectives designed to protect and enhance the rights of individuals." Among the specific human rights mentioned in Chapter IV are the rights to life; to dignity of human person; to personal liberty; to a fair hearing; to private and family life; to freedom of thought, conscience, and religion; to freedom of expression and the press; to peaceful assembly and association; to freedom of movement; to freedom from discrimination; and an injunction against the compulsory acquisition of property. In Section 41, the Constitution allows for restrictions on, and derogation from, fundamental rights in the interest of public safety and order, and "for the purpose of protecting the rights and freedom of other persons."[32]

The Nigerian Constitution draws heavily on the American model, but it also reflects the unique needs of Nigeria's sociopolitical realities and the experience of Nigeria's civil war. The Constitution goes to great lengths to provide a strong federal structure. It contains provisions that emphasize the government's duty to avoid discrimination and stress the importance of national unity.[33] Chapter VI, Section 202, stipulates that political parties contesting the presidency must make conscious efforts to nationalize rather than localize political support. The election of the president also reflects the efforts to avoid potential explosive and destructive national divisions along ethnic and regional lines. There is a double set of requirements intended "to ensure that no president can be elected who represents a narrowly defined segment of the population."[34] The winning presidential candidate must have "a majority of the national popular vote (a plurality if there are more than two candidates), plus at least 25 percent of the vote in no fewer than two thirds of the states."[35] In the case of an election deadlock, there must be a run-off. New elections are to be held if no winner emerges. This new device worked in the 1979 presi-

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dential elections, when the "victorious candidate (Shehu Shagari) won a majority of the states of the Federation."[36]

The elections this year and those in 1987 will be critical tests for the Nigerian formula of states and regional representation as a way of containing ethnic and geo-ethnic conflict. Nigeria has not as yet achieved true democracy, since the ruling party within individual states is often the dominant political force, and there is frequent resort to political thuggery to ensure party electoral victories.[37] In addition, in parts of the north and other regions, the population is not always either adequately educated or politically enough aware to argue that the political process is a democratic one.

Nigeria's success in instituting an open, competitive political system, in which civil and political rights tend to be respected, is not matched by its record with economic and social rights. At the state and federal level there are many examples of efforts to provide free education and better and less expensive medical care. Rampant corruption, however, has led to gross mismanagement of government funds and has diverted needed resources away from development. In addition, the economic imbalances between regions and various segments of the population continue to be a source of danger to the Nigerian experiment at an open political system. The religious riots of the Maitatsine sect in 1980 and 1982 are evidence of this danger. The sect's egalitarianism has attracted many converts among the poor, "who criticize the incredible enrichment by some Nigerians."[38] Some political leaders, concerned about the violence among impoverished Muslims in northern Nigeria, fear "that wide-spread civil disorder in the north could lead to the military seizing power . . . again."[39]

Another symptom of Nigeria's worsening economic problems was the precipitious expulsion of as many as 2 million aliens in the early months of this year, which led to great misery and loss of life among those affected. Although Nigeria had legality on its side in asking undocumented workers to leave, the resulting xenophobia and scapegoating indicate that Nigerian authorities still have far to go in ensuring fair and humane treatment of individuals residing in the country.[40]

The current Nigerian experience involves an experiment with important instruments for mediating conflict and containing the fissiparous tendencies that are so often the major impediments to the obser-

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vance of civil and political rights in Africa. The constitutional procedure to create states and the constitutional requirements for regional representation as a prerequisite to party registration and to win presidential elections are devices that may contain the ethnic and regional competition which thwarted the process of Nigerian nation-building in the past. But if the nation is to survive, the framework created by the 1979 Constitution will have to become more effective in addressing the issues of economic and social rights. The new political process was established at a time when Nigeria had considerable oil revenues, but a recession caused by the recent sharp worldwide drop in oil prices has focused attention dramatically on Nigeria's economic shortcomings. It also points to a serious weakness: the Nigerian bureaucrat's primary interest in taking care of kith and kin to the detriment of the country's overall development.

V

The case of Senegal differs from both that of Nigeria and that of Zaire. Senegal's very long association with France dates from the seventeenth century. During that time an elite developed that not only shared the egalitarian and liberal views of the French Revolution and enlightened French philosophers, but participated in French political affairs as well—for example, in the Estates-General meetings that led to the French Revolution. Unlike the people of the Belgian Congo, the Senegalese worked closely with the French in the administration of their territory. Even before independence, the country's urban elite were experienced at managing public affairs and came to consider themselves part of a wider French political elite. Yet French ideas, including notions of human rights and political participation, had not spread beyond the urban elite. As a result, there were two Senegals at independence: the Senegal of the gallicized urban elite and the Senegal of the peasantry, who continued to hold strong traditional views and a quasi-feudal outlook. In the countryside, where most of the population is Muslim, power was, and continues to be, wielded by Muslim holymen and leaders of Muslim brotherhoods, who are regarded as saintly patrons to be obeyed and followed.

In its postindependence period, Senegal has gradually opened up the political system to multiparty political competition. As for the economy, it supports a mixed one, encouraging the presence and

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growth of a private sector. President Senghor, in power from independence until 1981, and his successor, President Diouf, allied themselves with the powerful Muslim brotherhoods, which provided structures to mobilize the rural population into support for Senghor and Diouf and their political party. This maneuver has taken the edge off potential rural discontent and has reduced the chances for rural radicalism and strains that might have pushed the country into a less open mode of political development.

In large part because of President Senghor's knowledge that he had strong French support, he did not suffer from the paranoia that cripples so many African leaders and pressures them into a siege mentality. Rather than devising preventive detention measures and refining his means of repression, he simply avoided making political prisoners, and got possible opponents out of the way by placing them with international agencies and programs. The few incidents in the early 1970s that evoked a forceful response from him proved to be exceptions and not the rule. Senghor allowed the judiciary to develop and gain a sense of self-dignity, and he encouraged them to elaborate a particular Senegalese brand of human rights philosophy. This philosophy was articulated most often by Senegal's President of the Supreme Court, Keba Mbaye, now a judge on the International Court of Justice at the Hague.

Mbaye evolved a thesis which declared that civil and political rights are important to development and that all rights are additive. He criticized African rulers who, in the name of development, placed "restrictions on rights and public liberties flowing from positive law, especially the right to defense."[41] In the late 1970s, Mbaye worked closely with Senegal's Attorney General to publicize human rights among the general population. This initiative was part of a growing recognition by Senegal's urban elite that if their ideas did not gain currency among the wider population, both would be swept away in a crisis. Moreover, the elite recognized that their views must be blended with those of the rural population to establish a Senegalese ethic that would serve as a strong basis for the legitimacy of an open political system. Ibrahima Fall, a Senegalese professor of law, noted that there are in Senegal two African conceptions of human rights: "an individualist conception, which tends to prevail among the leading social classes and strata, marked by western influence; [and] a

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community and solidarity conception . . . still very strong among most of the population."[42]

The postindependence generation began to have serious misgivings about the extremely close relationship between the Senegalese political elite and France. In the 1970s, students with Islamic roots began to identify more closely with one another in an attempt to establish a Senegalese intellectual and philosophical identity independent of France. Furthermore, over the second decade of independence, pressure to have the president allow for greater political competition has grown.

Senghor attempted to respond to growing economic and social problems by opening the political system to an increasing number of political parties and by engineering a constitutional succession of power. In his view, opening the political system was the best way to deal with economic problems and avoid political troubles. In 1976, "a difficult economic time due to the fall in the price of phosphates and the impact of inflation,"[43] Senghor formally launched an experiment to restore a multiparty system, but limited it to only three parties. One response to the decision was a growth in the number of political publications in the country. Since 1976 a number have appeared that are critical both of the regime and individual ministers. Senghor also announced in 1976 the establishment of a system of proportional representation for the 1978 legislative elections and, further, that women would be allowed to hold office in his next government. In 1978 and early 1979, there were lively politics, as the number of legal parties grew to four. According to one observer, "[A] flourishing press and rival trade unions, illegal parties and movements, contributed to a spirited democratic rivalry."[44] Senghor won the 1978 elections with 82 percent of the vote, and his *Parti Socialiste* won eighty-two seats in the legislature. Abdoulaye Wade drew 17 percent of the vote, and his *Parti Democratique Senegalais* became the chief opposition party.

In April 1980, as Senegal was celebrating twenty years of independence, it was suffering its worst economic crisis, with the government forced to seek financial aid. During 1979 and 1980 there was increased unrest among university students, and religious affairs assumed greater importance. An Islamic group distributed antigovernment tracts in late 1979, and in September of that year a member of the Niasse Maraboutic family, El Hadj Ahmed Khalifa Niasse, an-

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nounced a fifth party, the Hizboulahi (God's Party). Senghor's government began proceedings against Niasse, who "was accused of having mixed religion and politics contrary to the law and of having conspired to create a fifth party." Niasse escaped to Paris, where he held a press conference and threatened to overthrow Senghor. In early 1980 several of his followers were arrested in the town of Kaolack for "importing and disseminating 5,000 cassettes of his Paris press conference."[45] Niasse was no real threat to Senghor, but his movement was symptomatic of a deepening malaise over Senghor's unwillingness to open up the political system more widely, as well as government corruption and mismanagement of the economy and very bad economic conditions. There were some observers who feared that if Senegal's youth were to become disillusioned with the existing political parties, they might also challenge the leadership of the Muslim brotherhoods through whom Senghor had shored up his power among the rural population.[46]

In January 1981, Senghor was succeeded constitutionally by Senegal's prime minister, Abdou Diouf, who immediately responded to the economic problems and growing social and political malaise by widening the political arena. He removed Senghor's limitations on the number of political parties and welcomed all stripes of political and economic thinking into legal participation in the country's political life. This move blunted his opposition and helped further to entrench the ruling *Parti Socialiste*—in a field of political parties that now numbered fourteen—by splintering "the opposition and [placing] . . . the once-menacing Abdoulaye Wade and his *Parti Democratique Senegalais* in a difficult position."[47] Diouf also visited with each of the main brotherhood leaders and won their support. Jean Collin, Minister of State for the Interior under Senghor, and an *eminence grise* for Diouf, is credited both with influencing Diouf to democratize Senegal's political process and to oust a number of political barons who had become too corrupt under Senghor. In 1983 Diouf won over the many opposition parties and was elected president. This event marked the completion of a successful devolution of power, and demonstrated a continued commitment to respect for civil and political rights.

President Diouf's strategy is to build coalitions among Senegal's social forces, religious and secular, and to promote an open political system as a way to keep criticism in the public domain, so that prob-

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lems can be caught in time and the growth of clandestine opposition movements and social violence prevented. Except for some social unrest in the southern Casamance region of Senegal, where the elite feel the distribution of public services and goods has been inadequate, he has been somewhat successful thus far.

It is in the realm of economic and social rights that Senegal's record lags. The country's weak economy limits the ability of the state to provide for economic and social rights beyond protection of private property, efforts to control corruption, and provision of basic services on a nondiscriminatory basis. Although Senegal gained independence with a highly developed physical and administrative infrastructure, its economy was not at all well developed. During its years as the administrative capital of French West Africa, the level of economic development outside urban centers had not been crucial. Since the end of colonial rule, however, developing the economy and managing economic resources have been key problems for the government. Senegal's overdependence on peanuts as a cash crop limits its financial resources, so much so that the government is often hard-pressed to respond to the growing demands of the general population for services and goods. President Diouf's popularity soared in 1982 and 1983, "aided by two years of good rain which . . . boosted the parlous rural economy."[48] The major test in the short term will be the government's ability to prop up the economy to avoid serious popular unrest in the event of another peanut crop failure, as in 1981. Since then, living standards in the countryside and among the urban poor have declined, and the government will have to demonstrate its commitment to economic and social rights and their development in Senegal.

The case of Senegal demonstrates that respect for basic rights and the achievement of nation-building and development are not mutually exclusive goals. It demonstrates further that enhancement of civil and political rights through a progressive opening of the political system to criticism and multiparty participation can help to overcome potential social unrest caused by economic and development problems. The more open system has allowed all stripes of opinion to be aired and has brought a wide range of groups with very differing opinions into the political process. But the experience in Senegal also demonstrates that the problem of how to use the expanded obser-

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vance of civil and political rights as a lever to promote economic and social rights remains to be solved.

* * *

The dilemma of human rights in contemporary Africa is not their acceptance in principle as universal standards but their application by African regimes. African diplomats took an active part in the adoption of the United Nations international Human Rights Covenants, and African academics have demonstrated that a variety of human rights values existed in African traditional society.[49] The current scope for observance of these rights, however, is problematic, since the heterogeneous nature of Africa's new states and the shift in scale of political and economic activities have often vitiated the effectiveness of traditional human rights values and the mechanisms that once existed to protect them. Many postindependence African leaders have displayed a tendency to behave more as lineage heads safeguarding the interests of their family and ethnic group than as national leaders whose charge is to moderate conflicts among the country's ethnic and regional groups. Respect for human rights must overcome the tensions created by the very artificiality of Africa's states and the absence of a national consensus or widely accepted political and economic institutions.

The Zairian experience epitomizes the dilemmas of human rights that are found in the vast majority of African countries. Senegal and Nigeria represent more the exception than the rule, but their recent experiences provide serious bases upon which to question the argument that the heterogeneity, underdevelopment, and artificiality of African countries are absolute barriers to the observance of universal human rights standards. If the promotion of human rights is to have a future in Africa, then it lies with the Senegals and the Nigerias, and in the continued development of a regional corpus of human rights legislation and treaty law.

ENDNOTES

[1]For the text of the UN Human Rights Covenants and other UN human rights instruments, see *Basic Documents on International Protection of Human Rights,*

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edited by Louis B. Sohn and Thomas Buergenthal (New York: Bobbs-Merrill, 1973), pp. 1-124.

[2]Christian Tomuschat, "Is Universality of Human Rights Standards an Outdated and Utopian Concept," in *Das Europa der Zweiten Generation: Gedächtnisschrift für Christoph Sasse* (Kehl-am-Rhein, West Germany: N.P. Engel Verlag, 1981), p. 598.

[3]Organization of African Unity, *African Charter on Human and Peoples' Rights,* CAB/LEG/67/3/Rev. 4 and Rev. 5, 1981; Amnesty International (London) publishes annually a report on human rights violations.

[4]Quotes obtained by the author during field work at Lagos, Nigeria, in November 1982.

[5]Infringements on freedom of the press can be added to the list. See Alan Cowell, "Case in Kenya Illustrates Constraints on Press in Africa," *International Herald Tribune,* May 16, 1983, p. 5.

[6]John K. Ebiasah, "Protecting the Human Rights of Political Detainees: The Contradictions and Paradoxes in the African Experience," *The Howard Law Journal* 22 (1979): 257, 249.

[7]W. Arthur Lewis, *Politics in West Africa* (New York: Oxford University Press, 1965), pp. 32, 44.

[8]James A. McCain, "Ideology in Africa: Some Perceptual Types," *African Studies Review* 17 (1) (1975): 65.

[9]*The New Internationalist,* 1978, pp. 16-17. An actual African comment to this effect is cited in "Human Rights in Africa: Further Thoughts and an Agenda for Action," by Henry Bretton. Paper presented to the Latin American Studies Association/African Studies Association Joint Meeting, Houston, Texas, November 1977, p. 42: "The African states . . . feel that in the present stage of their development, they cannot honestly be expected to fulfill the obligations spelt out in the [UN Human Rights] Covenants. They are preoccupied with the task of nation-building and may have to use stern measures to integrate the diverse communities making up the state, some of whose leaders would stop at nothing in their bid to disintegrate the state. The rapid economic development of the country may also lead to decisions which might detract from the high ideas expressed in the Covenant."

[10]Warren Weinstein, "Refugees in Central Africa: 1979," paper presented at Conference on Refugees, Department of State, Washington, D.C., October 30, 1979.

[11]Michael F. Lofchie, "African Crisis and Economic Liberalization in Tanzania," *Journal of Modern African Studies* 16 (3) (1978): 452.

[12]*Africa Confidential* (London) 24 (6) (March 16, 1983): 3.

[13]Marina Ottaway, "Social Classes and Corporate Interests in the Ethiopian Revolution," *Journal of Modern African Studies* 14 (3) (1976): 469-86.

[14]Claude Ake, "Explanatory Notes on the Political Economy of Africa," *Journal of Modern African Studies* 14 (1) (1976): 21.

[15]These remarks by Professor Ofusu-Appiah are cited in Jonathan Randall, "Weariness, Disillusionment Grip African Intellectuals," *The Washington Post,* January 25, 1977.

[16]Lansine Kaba, "The Cultural Revolution, Artistic Creativity, and Freedom of Expression in Guinea," *Journal of Modern African Studies* 14 (2) (1976): 485.

[17]For a study of Zaire, see *Zaire: The Political Economy of Underdevelopment,* edited by Guy Gran (New York: Praeger, 1979).

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[18]Rene Lemarchand, "The Politics of Penury in Rural Zaire: The View from Bandundu," ibid., p. 239.

[19]See David J. Gould, "The Administration of Underdevelopment," pp. 87-107; and Michael G. Schatzberg, "Blockage Points in Zaire: The Flow of Budgets, Bureaucrats and Beer," pp. 161-88, ibid.

[20]For an account of the disintegration of colonial Zaire, see Crawford Young, *Politics of the Congo* (Princeton: Princeton University Press, 1965).

[21]Stephen R. Weissman, *American Foreign Policy in the Congo* (Ithaca: Cornell University Press, 1974); Jean-Claude Willame, *Patrimonialism and Political Change in the Congo* (Stanford: Stanford University Press, 1972); Georges Nzongola, "The Bourgoisie and Revolution in the Congo," *Journal of Modern African Studies* 8 (4) (1970): 511-30.

[22]See remarks by Lumpungu Kamanda and Maitre Ndudi-Ndudi cited in *African Perspectives on Human Rights* by Warren Weinstein, with Lisa Jones and Frank McCoy (Washington, D.C.: Coordinating Council for International Issues, 1980), Department of State Contract No. 1722-920096, pp. 63-89.

[23]See *Africa Confidential* for events in 1977-83.

[24]See *Africa Confidential* for events in 1981.

[25]Marshall Carter and Otwin Marenin, "Human Rights in the Nigerian Context: A Case Study and Discussion of the Nigerian Police." Paper presented to the American Political Science Association, New York, August 1978, p. 5.

[26]Ibid., pp. 6, 20.

[27]Committee on Foreign Affairs and Foreign Relations, U.S. House of Representatives, *Country Reports on Human Rights Practices for 1977,* Washington, D.C., February 1978, p. 89.

[28]Ibid., p. 90.

[29]See *African Conference on the Rule of Law, Lagos, Nigeria, January 3-7, 1961, A Report on the Proceedings of the Conference* (Geneva: The International Commission of Jurists, 1961).

[30]Jean Herskovits, "Dateline Nigeria: A Black Power," in *Foreign Policy* no. 29 (Winter 1977-78): 177.

[31]Warren Weinstein, "Africa," in *Protection of Ethnic Minorities: Comparative Perspectives,* edited by Robert G. Wirsing (New York: Pergamon Press, 1981), p. 238.

[32]"The Constitution of the Federal Republic of Nigeria," pp. 13-21; Colin Legum, *Africa Contemporary Record* (London: Rex Collings, 1977), pp. C66-62; Moses E. Akpan, "The 1979 Nigerian Constitution and Human Rights," *Universal Human Rights* 2 (2) (1980).

[33]Legum, *Africa Contemporary Record,* pp. C64-77, B662.

[34]Ibid., p. B663.

[35]Donald Horowitz, "About-Face in Africa: The Return to Civilian Rule in Nigeria," *Yale Review* 68 (2) (1978): 201, 197.

[36]Akpan, "The 1979 Nigerian Constitution," p. 38.

[37]See *Africa Confidential* issues for 1982-83.

[38]*Jeune Afrique* no. 1154 (February 16, 1983), p. 26; Leon Dash, "Nigerian Moslem Sect Uprising Killed Hundreds," *The Washington Post,* December 17, 1982; *Africa Confidential,* 22 (4) (February 11, 1981): 4.

[39]Charles T. Powers, "Nigerians Fear Growth of Violence in Impoverished Population of Muslims of North," *The Los Angeles Times,* November 26, 1982.

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[40]Africa Confidential, 23 (22) (October 20, 1982): 2; *"Vente de Folie au Nigeria," Le Monde* (Paris), January 25, 1983; Lexie Verdon, "Nigeria Expels Illegal Aliens," *The Washington Post,* January 31, 1983; David Fouquet, "Behind Nigerian Exodus: Nation on Economic Slide," *The Christian Science Monitor,* February 2, 1983.

[41]Weinstein et al., *African Perspectives on Human Rights,* p. 26.

[42]Ibid., pp. 13-14, 56.

[43]"Legum, *African Contemporary Record* (1976-77), p. B694; for information on recent Senegalese events, see the annual review in *Africa Contemporary Record,* edited by Colin Legum, which is published each year.

[44]Legum, Ibid., (1978-79), p. B758.

[45]Ibid., (1979-80), p. B618.

[46]Ibid., pp. B617, B619.

[47]*Africa Confidential* 24 (4) (February 16, 1983): 5.

[48]Ibid., pp. 6, 7.

[49]Weinstein et al., *African Perspectives on Human Rights,* pp. ii-iii.

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Drew S. Days, III

Seeking a New Civil Rights Consensus

THE SUPREME COURT DECISION OF 1954 outlawing segregation in public schools, *Brown v. Board of Education,*[1] ushered in an era of unparalleled advancement in racial justice and the protection of civil rights in America. Since *Brown,* all official barriers to the participation of blacks on an equal basis with whites in education, as well as in employment, voting, housing, and public accommodations, have been removed. Moreover, blacks have not been the only beneficiaries of this movement. Other racial minorities, women, and the disabled have successfully relied upon principles established by *Brown* to strike down discriminatory practices impeding their progress. Yet despite the achievement in the years since *Brown,* the nation cannot yet legitimately claim to have eradicated the present effects of past discrimination based upon race, color, sex, or disability. As proof of this, we need only look at the degree to which blacks and other racial minorities continue to occupy the lowest rungs on our socioeconomic ladder, to which women find meaningful educational and professional opportunities closed to them, and to which the disabled are arbitrarily excluded from the mainstream of daily life.

Many of our major public and private institutions continue to recognize that the job of achieving racial justice and effective protection of civil rights in America has not been completed, and the direction of the movement is still forward. But the *momentum* of civil rights advancement has slowed significantly in recent years, and public debate over the pace and direction of further civil rights efforts has become increasingly divisive. People who thirty, twenty-five, even fifteen years ago would have unhesitatingly identified themselves as

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"pro–civil rights" now hasten to qualify that characterization, if not to reject it altogether. This article is devoted to a discussion of how this division came about and what, if anything, can be done to restore a national consensus on civil rights.

THE ORIGINAL CONSENSUS: FIGHTING SEGREGATION

A look at the nature of the original civil rights consensus might help us to understand how the division developed. First, civil rights and the ending of racial segregation against blacks were synonymous; *Brown* forced the nation to confront the enormity of the "separate but equal" doctrine that it had successfully avoided doing for almost sixty years. Second, the battle to win civil rights for blacks was viewed as a regional matter, since it was only in the South and certain border states that blacks faced officially mandated segregation; it required no major mental leap to make the connection between this regime of racial segregation and the South's long history of enslavement and subjugation of blacks. Third, the remedy for racial segregation was obvious to all: denial to anyone of equal opportunity in education, employment, voting, housing, or public accommodation on the basis of race must be categorically prohibited. Fourth, and closely related to the previous point, ending racial segregation would not require the expenditure of prohibitively large sums of money. How much could it cost to remove signs on public carriers designating "Colored" and "White" seating?

The victories achieved by way of this consensus were remarkable. Between 1957 and 1968, the Congress passed major comprehensive legislation outlawing racial discrimination in almost every area of our national life.[2] The Supreme Court and lower federal courts, for their part, continued to build on the constitutional framework established by *Brown*,[3] and to give liberal readings to the recently enacted civil rights statutes[4] as well as to laws passed during Reconstruction that had not been utilized meaningfully in almost a century.[5] Additionally, presidents from Dwight Eisenhower through Lyndon Johnson, and even Richard Nixon to a certain extent, placed the weight of the Executive Branch behind this assault on racial segregation. By 1970, virtually all overt forms of racial discrimination and segregation had been eradicated. The consensus had achieved its goal.

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RIGHTS FOR OTHER GROUPS

It became somewhat apparent during the 1960s, and unavoidably clear in the 1970s, however, that the original civil rights consensus was being weakened by events only dimly foreseen in the 1950s. Blacks were not the only racial minority demanding equal rights. Hispanics, Asian-Americans, and even Native Americans were seeking corrective action for discrimination. The women's rights movement had gained a momentum and a voice that could not be ignored. And groups of disabled persons, for so long an invisible minority in our society, came out into the open to demand fairer treatment.

The center of the original civil rights consensus could not hold in the face of this expanded constituency for several reasons. It is worth noting, for example, how remarkably effective Americans have been at avoiding the realities of discrimination. In the 1850s we were taught to believe that the subjugation of blacks was divinely ordained and the inevitable consequence of their natural inferiority.[6] In the 1880s, before Reconstruction had been given a reasonable chance to succeed in placing newly freed slaves on a sure footing, we were told that the systematic exclusion of blacks from places of public accommodation deprived them of no rights to which they were entitled as citizens.[7] And *Plessy v. Ferguson*[8] in 1896 led us to believe that the "separate but equal" doctrine was a value-neutral social accommodation, not meant in any way to imply black inferiority. To put it crudely, a nation that could believe such things, in the face of overwhelming evidence to the contrary, would believe almost anything. And so it has been.

Women

It is an irrefutable fact that women have been systematically denied opportunities equal to men to obtain an education, to pursue careers or find employment consistent with their abilities, and to participate in the political process.[9] Yet all too many of us, men and women, find it easier to explain the inferior status of women in terms not of discrimination, but of divine ordering and biological determinism. It is suggested that God's plan dictates that women fulfill the role of wife and mother while men serve as providers; that women, because they innately lack the physical and mental "toughness" of men, cannot be expected to assume positions of leadership in busi-

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ness, industry, or government. Similarly, fantastic constructs have been developed to explain away discrimination against other racial minorities and the disabled. Yet some members of the original civil rights consensus have tended to minimize the importance of addressing problems of the other groups because their circumstances differ, sometimes markedly, from those experienced historically by blacks. Women, for example, are not a minority. Moreover, they cannot be described accurately as a socially or economically deprived class, since measured by such standards, women are as randomly distributed as men. For every male pauper or millionaire, there is likely to be a similarly situated mother, sister, or wife. Furthermore, while no one any longer seriously argues that there are anatomical differences between blacks and whites sufficiently important to justify blacks being treated differently from whites, the undeniable anatomical differences between men and women have served as the basis for differential treatment over the years.

What complicates this issue is that not all those who have historically advocated such distinctions can be characterized as "sexist" or antifemale. Individuals closely identified with the fight for women's rights in the late nineteenth and early twentieth centuries, arguing that the anatomical differences between men and women necessitated certain reforms, helped push through labor law reforms requiring shorter hours and less rigorous conditions of employment for women.[10] This is not to suggest that there exists any fundamental conflict between the position of feminists then and feminists now. On the contrary, different forms of exploitation require different remedies. It does explain how the question of anatomical differences could provide those opposed to increased job opportunities for women with a "nondiscriminatory" rationalization for their position.

Two final observations need to be made about the women's rights movement in this connection. While the question of civil rights for blacks was basically one of ending their oppression by white segregationists, the fight for equality between the sexes cannot be explained so simply. To be sure, women have fought successfully, in most instances, to end practices that inhibited their full enjoyment of the benefits afforded men.[11] But some feminists have argued additionally that even practices which appear to *favor* women over men should be ended, since they tend to perpetuate stereotypical views of women as inferior to men.[12] And some judges and commentators have fur-

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ther complicated the issue by arguing that such arrangements really discriminate against men, not women: women may be stereotyped, but men are categorically deprived of surviving spouse or dependent military spouse benefits or alimony that would have been theirs had they been female.[13]

Other Racial Minorities

America's other racial minorities have suffered from discrimination, too. Hispanics, particularly in the Southwest, have been segregated in public schools and denied employment, access to public accommodations, and a chance to participate in the political process in ways very reminiscent of the black experience in the South.[14] Asians have also confronted diverse forms of exclusion from various sectors of daily life, especially in the West.[15] Those victims of discrimination, however, were largely ignored by the civil rights movement until the 1970s, principally because their plight did not appear to be nearly so dire as that of blacks. These groups had not been brought to the United States in chains, enslaved, and kept in a state of economic and social dependence for almost three hundred years. Nor had discrimination against these other racial minorities acquired the institutional features that characterized "Jim Crow." At least in this century, entrenched custom, rather than laws, had been sufficient to ensure that Hispanics and Asians were not treated fairly.[16] Consequently, such mistreatment was less likely to come to public attention and face the types of legal challenges that ultimately toppled the system of racial segregation in the South. Moreover, discrimination against these other racial groups has been confused in the public mind with issues of language differences and alienage. Whatever problems these groups confront, it has been argued, derive from their inability to master English or their refusal to acquire American citizenship. The matter has been further complicated by the fact that some discrimination against native-born or naturalized citizens of Hispanic descent in recent years has been carried out in the name of stemming the influx of illegal immigration from Mexico and South America, an effort that enjoys widespread public support.

There are several additional distinctions between Hispanics and blacks with respect to discrimination. On a psychological level, that Hispanics are classified anthropologically as Caucasian and were listed until relatively recently as "white" for governmental record-keeping

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purposes, has made it more difficult for many white Americans to comprehend that Hispanics could, nevertheless, be the victims of discrimination.[17] Furthermore, one of the realities most black Americans learn at an early age is that the color of their skin makes them easy targets for those who want to practice discrimination. Hispanics, in contrast, cannot be lumped together so readily based upon coloration. Depending upon their national origin and other genetic factors, Hispanics can be as fair as the fairest Anglo or as dark as the darkest black. This fact has produced at least two consequences. First, light-skinned Hispanics have been able to avoid many of the slights blacks have had to endure, for example, in seeking access to places of public accommodation. Second, looking at the situation more positively, these Hispanics have been welcomed more readily than even the fairest blacks into the mainstream of "Anglo" (white American) life.

That Asian-Americans are also victims of discrimination is even more difficult for many people to grasp. If we rely solely on standardized measures of educational and economic achievement, Asian-Americans appear to have been successful at levels far out of proportion to their presence in the population, and to possess aptitudes that exceed those of whites in certain fields. What these figures fail to show, however, is that the various subgroups of Asian-Americans have fared quite differently by such measures and that the economic successes, while notable when placed alongside the depressing status of blacks and Hispanics, have been relatively modest. Nevertheless, many are left wondering how a group that has done so well can justifiably claim to have been hampered in their advancement by racial discrimination, in the same naive way that the successes of Jews in America are pointed to by some as proof that anti-Semitism does not exist.[18]

The Disabled

The case of the disabled presents the most complexity when measured by the assumptions of the original civil rights consensus. First, whereas race and, in most instances, sex are regarded as irrelevant considerations in allocating societal benefits, we tend to view disability quite differently, for we grew up in a society where the disabled were, by definition, seen as incompetent to perform like normal people. The mentally ill and mentally retarded were best off, it was

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thought, in large institutions, isolated from the rest of the community.[19] And the physically handicapped, to the extent that they were given the opportunity to learn and work, were placed in special classes and "sheltered" employment settings.[20]

Though certain exceptional people with disabilities succeeded despite these external limitations, the conventional widsom was that most would never amount to anything and should therefore be taught to accept their lot. Some of those attitudes certainly stemmed from a genuine, though often paternalistic, concern for the disabled. But they had other, far less admirable origins. Physical handicaps were thought by some to be punishment for sins committed by a disabled child's parents. Others believed that the mentally retarded and the mentally ill were possessed by diabolical forces, and thus it was proper to call for institutionalization with common criminals to protect society's well-being. Some handicapping conditions were even regarded as contagious.[21] Though few would advocate such positions openly today, our thinking has been affected by these now outmoded—and, in retrospect, outlandish—notions.

Moreover, the definition of disability has changed in recent years. Not only do we now know much more about the nature of learning disorders, for example, but whole new classes of totally preventable and self-imposed difficulties such as alcoholism and drug addiction have been added to the list of disabilities.[22] The result has been to blur in the public mind the extent to which persons with more "traditional" disabilities have been denied fundamental rights historically.

The movement for the rights of the disabled has also presented new considerations with respect to remedies. In the case of racial or sex discrimination, the traditional view was that evenhandedness would prove sufficient in most instances. If restaurants stopped segregating blacks and whites, they would eat together or apart as they cared to. If professional schools dropped admissions quotas for women, they would enroll in numbers more approximating their proportion in the pool of otherwise eligible candidates. Where the disabled are concerned, however, such arguments cannot be made quite so easily. For even the disabled themselves will acknowledge that the simple dropping of categorical barriers to their advancement is sometimes not enough. Rather, for the disabled person to benefit, educational institutions, employers, and providers of other services must make "reasonable accommodations" to the person's handicap.

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Interpreters for the deaf, Braille materials for the blind, prosthetic devices for the paraplegic, access ramps for those in wheelchairs, and so forth, are absolutely necessary if disabled persons are to profit from the opportunities extended to them.

The legal treatment of the issue of reasonable accommodations has further distinguished conditions of the disabled from those of blacks, other racial minorities, and women. On a federal constitutional level, the courts have held that public agencies which refuse to provide reasonable accommodations are not violating equal protection or due process requirements.[23] Insofar as federal legislation is concerned, the disabled, unlike racial minorities and women, are not protected by any statutes forbidding discrimination outright. Rather, federal prohibitions with respect to the disabled apply only to federal government entities and to recipients of federal funds.[24] Most employers, for example, are forbidden by federal law from discriminating on the basis of race or sex. Such discrimination against the handicapped, in contrast, can be reached by federal law only if the employer receives federal funds, and further limitations on the reach of federal law, even where the funding nexus exists, may still deny a disabled person adequate redress for discrimination.[25]

In addition, federal law with respect to the disabled does not, in every instance, require that reasonable accommodations be provided. Where reasonable accommodations are anticipated by law, the courts have tended to interpret such requirements as imposing no more than a minimal burden upon the affected institution. And when the law is silent on this score, the courts have held that Congress must be regarded as having made a reasoned judgment not to impose any such burden. Where no reasonable accommodation is required, failure to provide it, say the courts, does not necessarily constitute "discrimination." The courts, however, were unwilling to leave things at this point, and they added to the existing complications by suggesting that there may be instances where failure to provide the most incidental and inexpensive assistance to allow a disabled person to compete on an equal basis with others *might* constitute discrimination.[26]

To this legal confusion, often providing the backdrop for public debate, one must add the issue of cost. Though many disabled persons need only the most minimal aid in order to benefit from educational and employment opportunities available to others, the public

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has been led to believe, incorrectly, that reasonable accommodation for the handicapped inevitably requires the expenditure of prohibitively large amounts of money.[27] It is on this point that the isolation of the disabled from other elements of the civil rights movement becomes clearest. For while no one would dare argue seriously today that racial minorities and women might be excluded from opportunities available to whites or men because of financial considerations, such arguments are common where the question of equal access for the disabled is being debated.

For all the foregoing reasons, the struggle for the rights of the disabled has strained the ties binding the original civil rights consensus. Many early advocates simply decided that it was someone else's battle.

CIVIL RIGHTS IN THE NORTH

At the same time that the civil rights movement was expanding to embrace the concerns of groups other than blacks, another change was also occurring: discrimination against blacks turned out to be more than a Southern phenomenon. Beginning in the late 1960s and early 1970s, it became clear that blacks had been discriminated against in Northern communities in ways that, while far less obvious than techniques used in the South, had effectively excluded them from the education, employment, and housing opportunities afforded whites. School districts in Denver and Pasadena[28] were found to have intentionally segregated black and white children from one another. Public authorities in Chicago and Indianapolis were held liable for locating housing projects in ways that reinforced and perpetuated segregated residential patterns. Police departments in New York, Boston, and Chicago[29] were forced to acknowledge their systematic exclusion of blacks and other racial minorities from employment opportunities routinely offered whites. Similar evidence of discrimination in the private housing market and in private employment, equally violative of federal antidiscrimination laws, became commonplace in judicial and administrative proceedings throughout the North and West.[30]

This movement of the civil rights struggle north caused difficulties for some original adherents in several respects. First, to those who conceived of discrimination in terms of segregationist laws and overt-

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ly exclusionary practices, imposing liability upon school boards, for example, for allegedly consistent patterns of segregative pupil assignments, seemed entirely beside the point. A far more plausible explanation, they thought, was that school boards were merely attempting to ensure that the principle of neighborhood schools was not violated. Second, the civil rights movement in the South benefited immensely from the fact that those fighting officially imposed and systematic segregation could feel a sense of moral superiority. The realization that discrimination was a national problem and that we were all in certain ways responsible for its presence gave rise to a moral ambiguity that sapped the commitment of many former civil rights advocates to its further advancement.

NEW REMEDIES

Civil rights efforts both North and South in the late 1960s and 1970s presented another complication. It became obvious that it would not be enough merely to strike down segregationist laws and to forbid more subtle forms of of discrimination. Enjoining Southern school boards from assigning children by race often did not result in any significant change in segregated attendance patterns. Furthermore, even after the courts directed that persons be employed on a nondiscriminatory basis, blacks did not rush to apply for jobs with employers who had been guilty of racially biased hiring practices. It was apparent that more than simple nondiscrimination measures would be required to overcome the inertia created by generations of segregation and the fears of blacks, often well founded, that taking advantage of these new opportunities would almost surely invite white reprisals. Thus, school boards were given the principal responsibility for desegregating their systems,[31] and employers were required to recruit and hire blacks actively—and, subsequently, other racial minorities and women—as part of the remedy for past acts of discrimination.[32] In some instances, courts or administrative agencies imposed specific goals and timetables for hiring members of groups that had been discriminated against in order to have more than the employer's assertions of "good faith" by which to judge compliance.[33] Moreover, the courts proclaimed that the victims of discrimination were entitled to awards of back pay for wages lost as a result of their mistreatment,[34] and to placement in the seniority ranks ac-

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cording to the position they would have held had they been treated fairly.[35] In voting, electoral systems were ordered restructured to ensure fair participation by blacks and Hispanics.[36]

For some, these developments with respect to remediation violated assumptions underlying the original civil rights consensus in several ways. For one, race and sex criteria had to be employed to ensure their effectiveness: unless school boards, for example, took race into consideration, they could not be expected to avoid perpetuating one-race schools in the desegregation process. For another, these remedies sometimes upset settled expectations of males and whites. Taking the school desegregation example a bit further, not only were black children ensured of a right to attend formerly all-white schools, but white children were required to attend formerly all-black schools as part of the process. Members of racial minorities and women found to have been denied their "rightful place" in the ranks were given seniority superior to that of incumbent whites and males, rendering the latter employees more vulnerable to layoffs in the event of economic retrenchment. Finally, this type of remediation necessitated in some cases the expenditure of significant sums of money. Equality was no longer available "on the cheap."

DEFINING DISCRIMINATION

All of these strains on the original civil rights consensus, however, are manifestations of more fundamental confusion in our laws and public policy relating to discrimination. Take, for example, the question of what constitutes impermissible discrimination. The answer depends, in the first instance, upon whether one seeks a federal constitutional or statutory definition. The Supreme Court has held that discrimination violative of the U.S. Constitution occurs only when some persons are *intentionally* treated less favorably than others because of their race, sex, color, national origin, or religion. Governmental practices—to which the Constitution speaks directly—that have merely the *effect* of falling more harshly on some groups than on others are not unconstitutional on that basis alone.[37]

Where federal statutes are concerned, what constitutes illegal discrimination becomes more problematic. Some federal statutes, such as a provision of the Voting Rights Act of 1965, make it explicit that a violation occurs whenever racial minorities are disadvantaged,

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whatever the motivation behind the action in question.[38] Other statutes, like the ban on employment discrimination under the Civil Rights Act of 1964, have been construed by the courts to require, in some cases, only a showing of "disparate impact" to invoke their remedial provisions, even though they contain no explicit language to that effect.[39] Thus, an employer who uses an employment screening device—such as an aptitude test or educational achievement level—that disparately excludes blacks, other racial minorities, or women as compared to whites or males, and that cannot be shown to be meaningfully related to the requirements of the job to be filled, has violated the law. On the other hand, where the contention is that an individual or a group of persons have been denied equal job opportunities outright because of their race, sex, or on other impermissible grounds, not indirectly through the use of otherwise neutral screening devices, the same law, the courts have concluded, requires proof that the denials were intentionally motivated.[40] While these distinctions have a certain logic-chopping appeal to them, one has a right, nevertheless, to ask how the same language in one federal law can be interpreted so differently depending upon how the claim of discrimination is framed. Moreover, the courts have themselves encountered difficulties applying this theoretical distinction where the facts might justify either mode of analysis.[41]

In contrast, the courts have construed other statutes that do not address explicitly the question of what constitutes a violation to require proof of intent, as in the case of another provision of the 1964 Civil Rights Act prohibiting discrimination by recipients of federal financial assistance. This different construction is dictated, the courts contend, by their conclusion that Congress meant to embody no more than the constitutional standard for discrimination, not to extend coverage beyond such limits. The Supreme Court's decisions in this respect, particularly one the past term on the federal financial assistance provision, are so fragmented and contorted in their reasoning as to almost defy comprehension.[42] Consequently, very little can be done to predict how the Court will come out on the question of what constitutes discrimination in statutes that are not explicit in that regard.

Irrespective of whether one is required to prove intent or can rely merely upon proof of a discriminatory impact, distinctions blur once again on the issue of what evidence will satisfy either test. Put more

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simply, can circumstantial evidence be used to prove only a case of discriminatory effect or will it also suffice in some instances to establish the existence of discriminatory intent as well? The courts have answered this question with a tentative "yes," by saying that there are, indeed, some situations where circumstantial evidence can be so overwhelming as to make it impossible to avoid a finding of intentional discrimination.[43] Short of that, however, no constitutional or constitutionally based statutory violation will be made out. In view of this less than helpful guidance, it is no wonder that parties and federal courts have been left to resolve such matters on an often ad hoc and haphazard basis. Consequently, electoral schemes that appear by any objective measure to be identical may be treated entirely differently by the courts, based upon how different judges evaluate what often are myriad relevant factors bearing on the question of discriminatory intent.[44]

It might be argued that the problems of discerning intent in civil rights cases are no more difficult than those confronting courts in a variety of other contexts. In both criminal law and tort law (dealing with civil liability for injury or damage), courts are often required to determine whether the defendant intended to violate another's rights or did so accidentally or negligently. While this is undoubtedly true, civil rights cases often provide difficulties in this respect of an entirely different order of magnitude. For what such cases often present is not whether specific individuals intended to discriminate but whether certain collectivities of individuals, such as school boards and city councils, or administrative agencies, like police and welfare departments, acted in a manner purposely designed to disadvantage certain people because of their race or sex or on other impermissible bases. Yet courts now routinely attempt to extract sufficient evidence of discriminatory intent from the actions of sometimes thousands of people acting over periods of many years.

THE LIMITS OF LITIGATION

All of this concern over how one goes about proving discrimination stems largely from the fact that we have looked primarily to litigation to correct the effects of generations of exclusionary practices. This reliance has created its own problems for the civil rights movement.

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Congress enacted the modern civil rights laws because it concluded that blacks, principally, and other minorities and women to a lesser degree, had been victims of "societal discrimination," that is, actions by various combinations of American institutions, both public and private. Rather than legislating directly to create both opportunities for members of these groups and new federal agencies to see to the enforcement of such requirements, it decided instead to impose upon the victims of discrimination the principal responsibility for vindicating, through the courts, their newly established rights. There were other alternatives. The Congress could have, for example, required America's institutions to provide immediate access to blacks, other minorities, and women. Employers could have been required to justify the total or substantial absence of minorities or women in their work forces; housing authorities and communities could have been required to explain segregated housing patterns; election authorities could have been required to explain the lack of any meaningful black electorate or representation on governmental bodies. Federal agencies could have been given the responsibility for determining which institutions were "out-of-compliance" with such requirements and for obtaining their obedience under penalty of certain sanctions.

Moreover, the Congress could have allocated major resources to assist those institutions found not to be guilty of overt, blatant discrimination against racial minorities or women—or those seeking to reform voluntarily—to "integrate" more than token numbers from those groups into their operations or afford them greater opportunities to enjoy services to which they were previously denied access. Special programs limited solely to racial minorities or women could have been established to provide them with education and training that was deemed necessary to take advantage of opportunities only recently opened up on a nondiscriminatory basis. In these ways, Congress might have ensured that the burden of rectifying the effects of "societal discrimination" was spread relatively evenly across the society in general. Since the country, collectively speaking, was guilty of the violations, it could have followed that it was also responsible for providing a remedy—collectively. Arrangements for addressing discrimination against the disabled could have been made along somewhat similar lines, taking into consideration distinctions between their situation and those of racial minorities and women.

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But Congress did not do this. Instead, private parties were expected to go to court seeking relief against individuals or institutions for what they claimed were acts of illegal discrimination. If they proved their case, the individual defendants would be ordered by the courts to provide adequate relief. Certain federal agencies were given litigating authority, of course. But their activities were limited explicitly by statute, in some instances, and by practical considerations otherwise, to addressing only "patterns or practices" of discrimination. Moreover, the authority for even administrative enforcement envisioned that private parties would shoulder much of the responsibility for triggering agency action through the complaint process. In practice, private litigation efforts, pursuant to the "implied private right of action" doctrine, long ago supplanted in importance agency enforcement of statutes that Congress anticipated would be handled principally through the administrative process.[45] Such agencies have lacked the will, often for political reasons, or the resources to carry out their enforcement functions responsibly and effectively.

This arrangement served tolerably well for many years after the modern acts were passed, largely because the wrongs were obvious and long-standing and the remedies relatively straightforward: employers who categorically refused to hire blacks and women were ordered to open their doors. There appeared to be nothing particularly inappropriate about placing upon defendants found guilty of such blatant, vicious racial or sex discrimination the burden of remedying the effects of their patently illegal actions. They merely "got what they had coming to them." Ambiguities were not to be found here.

The real problems have arisen only in recent years. On the plaintiffs' side, the layers of requirements that the federal courts have imposed upon them to prove violations of civil rights laws and the sheer complexity of antidiscrimination cases have combined to make it impossible for other than the most well-established organizations or private practitioners to bring major lawsuits. But of greater significance, this arrangement has become less and less defensible to some in cases where defendants have been found to have engaged in only "technical" violations of the law rather than in outright and purposeful discrimination.

Where, for example, an employer is held liable for a violation of employment discrimination because it used an aptitude test that dis-

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proportionately screened out blacks and was found not to be supported by "business necessity" (proven to test effectively qualifications for the job in question), such a defendant has argued that the discriminatory effect is not caused by its wrongdoing but rather by the cumulative impact of denials of equal oportunity to blacks—in education, for example—by other societal institutions.[46] Moreover, even in those instances where some intentional discrimination can be established, legitimate questions can be raised over whether a school board that engaged in certain segregative conduct twenty years ago should be expected to remedy singlehandedly present-day segregative patterns, since common sense alone tells us that the current problem is not entirely of the present school board's making. Private choice, private discrimination, and segregative actions by a complex combination of public agencies, such as housing and transportation authorities, have had a significant impact in ways beyond the ability of a school board to control or remedy.[47] In both instances, there is the understandable reaction of some that the "little guy" is bearing unfairly the responsibility for remedying transgressions for which he was only partially responsible, if at all.

All of this is not meant to suggest that corrective measures should not be taken to end practices that exclude blacks or other groups from job opportunities or that we should wink at the abysmal degree of present racial segregation in our public schools. This is no brief for barring the disabled from entering the "mainstream." Rather, it is designed to raise candidly the question of whether we can continue to look to the litigation model as the principal method for achieving civil rights progress, given its significant shortcomings and waning public acceptance.

Ironically, our reliance on the litigation model has affected negatively efforts by public and private institutions to address lingering problems of discrimination voluntarily. In none of the three major affirmative action (or "reverse discrimination") cases decided by the Supreme Court since 1977 has "remedying the effects of societal discrimination" been accepted by a clear majority as a legitimate justification for the racially explicit selection programs at issue.[48] Consequently, the decisions have been interpreted by some commentators and lower courts to require that such programs be designed to remedy the effects of discrimination particular to the institution in which they originate, and that the institutions themselves be legally "com-

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petent" to determine the need for such corrective measures in the first place. In any event, the ambiguity and opaqueness of these decisions have probably done little to reduce the extent to which voluntary affirmative action programs are challenged in court. Indeed, they seem to have provided additional fuel to the already heated public debate over the propriety of such practices.

* * *

This article has attempted to describe why the original civil rights consensus fell apart. It presents, one would hope, explanation for defections by otherwise decent, compassionate people from the struggle for equality in America long before the job was completed. But to explain their behavior is not necessarily to condone it. That they do not deserve to be called racists or sexists does not mean that their resistance to a comprehensive approach to civil rights has not, in some instances, been as effective a barrier to advancement as the opposition of those fundamentally opposed to equal justice for all from the very start. America has lost its way on civil rights, and they must bear substantial responsibility for allowing it to happen.

They also hold the key to restoring a national consensus on civil rights, for the "they" referred to throughout includes most of us: whites opposed to programs designed explicitly to assist blacks; males, of all races, who reject the idea of women playing nontraditional roles; blacks concerned that Hispanics are being treated better, or vice versa; everybody against the handicapped. Whether this will happen depends upon whether "we" are now willing to confront forthrightly what has to be done to make our society truly egalitarian. Things will not change radically as long as some continue to argue, for example, that women are innately incapable of assuming certain roles in national life and that ensuring access for the disabled is too costly, for such arguments are born of fundamentally the same ignorance, stereotyped thinking, and investment in the status quo that justified the subjugation of blacks for several centuries. Nor can we continue to require the "outs" of this society to litigate their way into full citizenship. The origins and current manifestations of discrimination are far too complex for lawsuits to sort out to anyone's satisfaction. Litigation, a mechanism designed principally to resolve

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disputes between individuals, can no longer be relied upon to resolve the problems of *class* inequality caused by institutions, except in the most obvious cases of exclusion. To do so gives merely the impression of fairness and progress, leaving to succeeding generations of Americans the task of devising realistic solutions.

In sum, what has to be accepted is that solving the current problems of discrimination will be possible only through a sustained effort, properly funded by both public and private institutions, that focuses explicitly on the inferior status of blacks, other racial minorities, women, and the disabled. It will take time, and it will not occur without substantial impact upon the settled ways in which whites, males, and the "able-bodied" have been accustomed to functioning in this society.

However all of this sorts out, of one thing we can be certain. Problems of discrimination are not going to disappear on their own. Our experience since *Brown* has taught us that treating such problems "with all deliberate speed" merely postpones the inevitable and exacts a higher price in human and financial terms than would have been the case at an earlier time. So the new consensus on civil rights comes down to a simple proposition: we have to agree once and for all to pay now rather than later.

ENDNOTES

[1]347 U.S. 483 (1954).
[2]Civil Rights Act of 1964, 42 U.S.C. §2000; Voting Rights Act of 1965, 42 U.S.C. §1973; Fair Housing Act of 1968, 42 U.S.C. §3601.
[3]*Cooper v. Aaron,* 358 U.S. 1 (1958); *United States v. Jefferson County Bd. of Educ.,* 380 F.2d 385 (5th Cir. 1966).
[4]*Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241 (1964) (public accommodations).
[5]*Jones v. Alfred H. Mayer Co.* 392 U.S. 409 (1968).
[6]*Dred Scott v. Sandford,* 60 U.S. 393 (1857).
[7]*The Civil Rights Cases,* 109 U.S. 3 (1983).
[8]163 U.S. 537 (1896).
[9]*Frontiero v. Richardson,* 411 U.S. 677 (1973).
[10]*Muller v. Oregon,* 208 U.S. 412 (1908).
[11]*Reed v. Reed,* 404 U.S. 71 (1971).
[12]*Rostker v. Goldberg,* 453 U.S. 57 (1981).
[13]*Califano v. Goldfarb,* 430 U.S. 199 (1977) (concurrence of Justice Stevens)
[14]*Hernandez v. Texas,* 347 U.S. 475 (1954); *Castenada v. Partida,* 430 U.S. 482 (1977).
[15]*Ex Parte Endo,* 323 U.S. 283 (1944); *Lau v. Nichols,* 414 U.S. 563 (1974).

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[16]*Mendez v. Westminster School Dist.*, 64 F. Supp. 544 (S.D. Cal. 1946).
[17]*Ross v. Eckels*, 468 F.2d 649 (5th Cir. 1972).
[18]*University of California Regents v. Bakke*, 439 U.S. 265, 309 n. (1978) (plurality opinion of Justice Powell).
[19]*Buck v. Bell*, 274 U.S. 200 (1927).
[20]*Board of Education v. Rowley*, 102 S.Ct. 3034 (1982).
[21]*Halderman v. Pennhurst State School and Hospital*, 446 F.Supp. 1295 (E.D. PA. 1977).
[22]*Whitaker v. Board of Higher Education of the City of New York*, 461 F.Supp. 99, 106 (E.D.N.Y. 1978).
[23]*Southeastern Community College v. Davis*, 442 U.S. 397 (1979).
[24]Rehabilitation Act of 1973, 29 U.S.C. §701 et seq.
[25]*Trageser v. Libbie Rehabilitation Center, Inc.*, 590 F.2d 87 (4th Cir. 1978).
[26]*American Public Transit Assn. v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981).
[27]"Accommodations for Handicapped Employees Surveyed," 2 *Employment Practices Guide* ¶5068 (Oct., 1982).
[28]*Keyes v. School District No. 1, Denver*, 413 U.S. 189 (1973); *Pasadena City Board of Education v. Spangler*, 427 U.S. 424 (1976).
[29]*Guardians Assn. v. Civil Service of City of New York*, 633 F.2d 232 (1980); *Castro v. Beecher*, 459 F.2d 725 (1st Cir. 1972); *United States v. City of Chicago*, 549 F.2d 415 (7th Cir. 1977).
[30]*Clark v. Universal Builders, Inc.* 501 F.2d 324 (7th Cir. 1974); *Rios v. Enterprise Association Steamfitters, Local 638*, 501 F.2d 622 (2d Cir. 1974).
[31]*Swann v. Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971).
[32]*Carter v. Gallagher*, 452 F.2d 315 (8th Cir. 1971).
[33]*NAACP v. Allen*, 493 F.2d 614 (5th Cir. 1974).
[34]*Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975).
[35]*Franks v. Bowman Transportation Co.*, 424 U.S. 747 (1976).
[36]*City of Richmond v. United States*, 422 U.S. 358 (1975).
[37]*Washington v. Davis*, 426 U.S. 229 (1976).
[38]*City of Rome v. United States*, 446 U.S. 156 (1980).
[39]*Griggs v. Duke Power*, 401 U.S. 424 (1971).
[40]*Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248 (1981).
[41]*Connecticut v. Teal*, 457 U.S. 440 (1982).
[42]*Guardian's Assn. v. Civil Service Commission*,____U.S.____51 U.S.L.W. 5105 (July 1, 1983).
[43]*Washington v. Davis, supra.* n. 37.
[44]*Rogers v. Lodge*, 454 U.S. 811 (1982).
[45]*Cannon v. University of Chicago*, 441 U.S. 677 (1979).
[46]*Connecticut v. Teal, supra*, n. 41.
[47]*Columbus Board of Education v. Penick*, 443 U.S. 449 (1979).
[48]*University of California Regents v. Bakke, supra* n. 18; *Steelworkers v. Weber*, 443 U.S. 193 (1979); *Fullilove v. Klutznick*, 448 U.S. 448 (1980).

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Mancur Olson

A Less Ideological Way of Deciding How Much Should Be Given to the Poor

HOW MUCH ASSISTANCE SHOULD BE GIVEN to those with low incomes? The debate about this question has gone on for centuries, if not for millennia. On one side, many emphasize the misfortunes and deprivations the poor endure and the moral appeal of compassionate public policies. On the other side, many call attention to the role that improvidence and indolence play in accounting for poverty and the extent to which programs to aid those of slender means impair the incentives to work and to save.

Since this debate has gone on for so very long without any sign of consensus, and apparently even without narrowing the range of disagreement, it seems natural to ask whether the issue has been debated and researched in the best way. Generally, when there is no narrowing or diminution of disagreement, there is also little or no intellectual progress. The emergence of areas of consensus, by contrast, usually signifies compelling results. In my own discipline of economics, macroeconomic theory (the modeling of the fluctuations of the economy as a whole) is sharply divided between contending schools, presumably because there are obvious shortcomings in each school's theory. Yet at the same time there is something like consensus about microeconomic theory (the modeling of behavior in individual markets), presumably because the results are compelling to competent researchers of all kinds. Some might argue that the debate about the distribution of income is entirely different because it centers around an enduring conflict of interest between those of higher and those of lower incomes, and that as long as human nature re-

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mains unchanged, there can never be any hope of diminished disagreement. But conflicts of interest cannot be the only source of the problem. People often disagree about the distribution of incomes even in foreign societies in which they have no personal stake, and the views that they have on the inequality of the income distribution in their own societies are by no means perfectly correlated with their personal income levels, so ideology and moral judgments clearly play a role.

Thus there is a need to look for methods of researching and debating what would be the most appropriate level of transfers from upper income to lower income people. We need a method of inquiry or discussion that will generate more light than heat. This paper will set out such a method. Obviously, no debate as long-standing and widespread as this can be resolved by any amount of new research, much less by a single essay. A new perspective on the problem may nonetheless be interesting and instructive, and in the long run marginally improve the quality of debate and decision-making.

II

In an issue of *Daedalus* devoted to human rights, it is perhaps necessary to ask whether there might be the beginnings of a solution in the rhetoric on human rights. There is almost a consensus in civilized societies that torture is wrong, that human beings should not be summarily executed, that those accused of crimes should have the right to a fair trial, that everyone should have freedom of speech, and so on. Should we expect eventually to get the same degree of consensus about whether human beings have a right to be protected against poverty? Should we strive for a society that guarantees "freedom from poverty" in the same way it guarantees "freedom of speech"?

The incongruity of the legalistic and human rights rhetoric in this area was brought to my attention a few years ago by the tragic situation of a lawyer of my acquaintance. One evening in a restaurant I was approached in a spirit of desperate urgency by this lawyer-acquaintance, whom I knew to be a man of impressive educational qualifications, distinguished family background, and somewhat rigid moral views. The problem, I soon discovered—with embarrassment as well as dismay—was that my acquaintance had lately been "incarcerated," as he put it, in a mental asylum. He was fearful that he

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would be put back there again before he could accomplish an urgent mission of the utmost importance. This mission, it turned out, was to persuade the U.S. Supreme Court to declare poverty unconstitutional!

Neither this man's tragic delusions nor his wonderful moral intensity is relevant to the truth or falsity of the legalistic or human rights approach to poverty and income distribution. Nonetheless, for some people the appeal of this approach is so great that it may be useful to expose its inherent failings by carrying it to its logical extreme. The febrile arguments of my unfortunate acquaintance may perhaps remind us all that more—very much more—needs to be done to solve the problem of poverty than to pass a law, even a constitutional law, against it.

Why is the "right" to protection from poverty or low income less amenable to solution by legal or constitutional fiat than some other problems? Though this is too large a matter to analyze rigorously here, a few aspects of the matter quickly become clear. Most of those human rights about which there is consensus in at least the stable and advanced democracies are rights that, for the most part, protect the individual from abuses by his own government. These rights, moreover, can usually be protected at little or no cost to the society, at least in the stable democratic societies in which the consensus about these rights exists. Thus the right of free speech or the right not to have one's property taken without due process of law are rights that were established with full awareness that the government itself was the principal institution having the coercive power to silence us or arbitrarily seize our property. Incumbent officials also have a special incentive to silence free speech, since dissent is very likely to take the form of criticism of (and political opposition to) them. An institution with a police force and an army also has a physical power to silence speech or to seize property that is orders of a magnitude greater than that of any individual citizen.

Thus constitutional protection of our rights to freedom of speech and to own property is, especially, the protection of individual rights against government encroachment. In any society in which any genuinely constitutional order is attainable, the protection of the rights I have mentioned is something the government can be expected to achieve. We are not mistaken in looking to the government to protect the rights in question, because about all that is required to maintain

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these rights is that the government avoid doing things it has the physical capacity to do, but (at least in the societies at issue) no need to do. Our speech and property are, of course, also protected against infringement by private individuals, but the government can normally protect these rights through the normal instruments of law and order that it must have in any case.

The human rights about which there is consensus in the advanced democratic societies may be maintained at little or no cost, and often even make a society richer. In the United States today, free speech, quite apart from its more familiar advantages, probably also saves the government money, since it would take quite a few extra policemen, jailers, and court officials to silence a people with the habit of speaking their minds. Free speech may make it harder for a president to get reelected, but it may reduce taxes. The contribution that free speech makes to intellectual advance, scientific research, and technological progress also has to be added to the balance. Similarly, the constitutional prohibitions against arbitrary seizure of property also make a society more prosperous. Who, for example, would want to invest in the capital goods that increase productivity if this property could be taken away at the whim of an official?

That the stable democracies are certainly not much worse off economically because they preserve the classic human rights, and are actually probably richer for it, is suggested by their status as generally the most prosperous nations in the world. The list of countries that protect both human rights and democratic processes overlaps so strikingly with the list of the most prosperous countries, that this alone strongly suggests a causal connection.[1] There are, to be sure, some who suppose that severe constriction of individual rights and liberties is necessary for economic development. They would have to argue that the liberal democracies are the most prosperous countries because individual freedom and democracy are luxuries that only rich nations can afford. This view does not survive careful examination.[2]

III

The problem of protecting individuals against relatively low incomes differs dramatically from the problem of protecting the familiar individuals' rights or freedoms, and is much less suited to solution

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by legal fiat. One reason for this becomes evident as soon as we ask what any society must do, at a minimum, to protect all of its citizens against poverty. Since poverty is a lack of goods and services, obviously any society that would abolish poverty must, first of all, produce enough goods and services to supply every individual in the society with a standard of living that is deemed to be adequate. The society must not merely abstain from certain actions, such as jailing people for criticizing the government; it must also perform a positive and by no means trivial task. The Supreme Court could conceivably declare poverty to be unconstitutional, but even with the assistance of its marshalls and the other officials of the legal system, it could not possibly produce (or even ensure the production of) the goods needed to guarantee a decent life for all.[3]

Another reason any right to protection from poverty would be different from the familiar rights or liberties is that in most societies the government is neither the main source of poverty nor the main source of wealth. Whereas government officials are the ones with the incentive and the power to repress dissent or to arrest arbitrarily, they are not the main source of the production that is needed to alleviate the poverty. Since in most societies the private sector accounts for most production, a change in the instructions or rules by which government officials act will not by itself bring about an end to poverty. There are, to be sure, societies of the Soviet-type in which almost all production is organized and controlled by the government—societies in which it might seem, at first glance, that a right to be protected against poverty could be guaranteed simply by changing the rules or instructions by which government officials operate. But it is by no means clear that totalitarian societies can guarantee individual rights of any kind, or if they did, how they would then deal with what they label (and punish) as "social parasitism."

So any legal right to protection against poverty in most societies is not simply a right to demand a certain inhibition on the part of government or a mere extension of its customary work in providing law and order. In those societies in which the private sector is the source of the most production, a legal right to a specified standard of living is an enforceable claim on the output of the private sector. A right to protection against poverty would have to be a claim on what others produce in their capacity as private citizens. Such a claim may be both feasible and desirable, but there can be no question that it is

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very different from the classic human rights and liberties. It requires, among other things, that producers be denied their customary rights to the fruits of their labors.

A third reason why a right against poverty is different from the familiar legal rights or liberties is that it is incomparably more costly. A stable society can certainly protect individual rights and property at relatively little cost, and, as I argued earlier, the protection of these rights can make a society richer. But protecting individuals against low income, on the other hand, is very costly, and for two different reasons. It is costly, first, because the income that will be transferred to those with low incomes must be found, and second, because these transfers will have adverse effects on the incentives to work and save, both for those who receive the transfers and for those who are taxed to provide them. Since these adverse effects on incentives will be considered later, no more will be said about them now.

The purpose of emphasizing these differences between any right to protection against poverty and the traditional legal rights is *not* to argue against programs to aid the poor, or even against more generous programs. On the contrary, much of the remainder of this paper will be devoted to developing a new argument in favor of such programs. The purpose is rather to show that the language of human rights and legal rights is quite unsuited to an analysis of public policy about poverty and income distribution.

IV

We can obtain a deeper understanding of public policies about poverty and income distribution, and also transcend to some extent the unending and unproductive debate between the secular religions of the right and the left, if we look at the satisfaction, or worth, or utility that people of different income levels get from their incomes and from marginal increases in those incomes. We must look, in other words, at the urgency, intensity, or importance of the desire or need for additional consumption at different levels of consumption or income. At first it may seem that this is such a simple and obvious matter that it needs no attention. Is it not obvious that the poor need additional income more than the rich and that the poor would therefore obviously get more satisfaction out of a given absolute increase in consumption than would the rich? The issue, however, is not quite

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so simple. We cannot look into anyone's head and see how intensely he or she suffers because of a low level of consumption, or how intensely he or she desires a higher income. How, then, can we verify any assertion that this or that category of persons will get more satisfaction or utility out of a given increase in consumption? How can we make what economists call "interpersonal comparisons of utility"? Indeed, how can the researcher even begin to get a handle on the question of how important additional income is to people at different levels of income or consumption?

There was an opening for a scholarly or scientific way of doing research on this problem in John von Neumann and Oskar Morgenstern's classic book *The Theory of Games and Economic Behavior.* That book, though it focused mainly on other matters, introduced the notion that we could get an idea how much a given gain in consumption or income would matter to an individual by asking how much he or she would pay for a given probability of obtaining some larger sum. We could, for example, ask how much an individual would pay for a one-in-ten chance of getting a thousand dollars. Obviously, the arithmetic expectation or "expected value" of this gamble is the product of one tenth times a thousand dollars, or one hundred dollars. If a very large number of such gambles were offered, each for a hundred dollars, the amount paid out to winners in the aggregate would, of course, tend to equal the total amount paid for the gambles.

But we cannot conclude from this that every individual would necessarily be willing to pay a hundred dollars for a one-in-ten chance of getting a thousand dollars. An individual might be willing to pay no more than, say, eighty dollars for a gamble with an expected value of a hundred dollars. This would be rational if the individual believed that each of the dollars he would gain if he won the gamble would be worth less to him than each of the hundred dollars he would lose if the gamble were unsuccessful. This person would have a "diminishing marginal utility of income"—he or she would expect more utility per dollar of consumption at the pre-gamble level of income than would be obtained at the higher level of consumption he or she would have if the gamble were successful. If, on the other hand, the individual were willing to pay, say, one hundred ten dollars for a one-in-ten chance on a thousand dollars, this would make sense only if the utility per dollar from the thousand dollars he might win was

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greater than the utility per dollar of each of the one hundred ten dollars he was willing to pay for the gamble. This person would have a "rising marginal utility of income." Obviously, if the person were willing to pay up to one hundred dollars but no more for the gamble, then this would suggest that dollars ventured on the gamble were worth exactly as much as any that were won in the gamble: the utility of consumption or income rose in a straight line with income.

Some four years after the von Neumann-Morgenstern book was published, two other researchers applied their procedure to everyday observation of behavior, and in an article entitled "The Utility Analysis of Choices Involving Risk,"[4] drew some influential conclusions about the value or utility individuals would get from given increases in income or consumption. The two researchers were Milton Friedman, the Nobel-Laureate economist, and Leonard Savage, a distinguished statistician. Since Friedman is known among the general public perhaps more for his popular writings and his tireless advocacy of laissez faire than for his many important technical or scientific achievements, it may be necessary to point out that this article was definitely a scientific contribution. Though perhaps not readily accessible to the general public, it became an almost instant scientific classic.

Friedman and Savage pointed out in their article that individuals reveal something about the utility or satisfaction they derive (or lose) from given increases (or decreases) in income when they buy insurance, and also when they gamble in lotteries and casinos. In other words, they used the von Neumann-Morgenstern approach to analyze behavior observed in real life. I shall attempt to describe the essence of their argument in an extremely casual and untechnical fashion, one that does not do justice to its precision, but that may thereby interest a broader set of readers in this important line of inquiry.

Consider, first, what we do when we buy, for example, fire insurance: we do not give up money and get something *different* in exchange for it, as we do when we spend money in a store, but rather we usually get nothing back at all, unless the contingency against which we have insured occurs—and then we are likely to get back much more money than we paid out in premiums. In other words, insurance is trading a small amount of money for some probability of getting a larger sum, should the specified contingency occur—or

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trading the certainty of losing a modest amount of money in premiums for what is normally a small chance that we will get a large amount of money back. But the amount that, as purchasers of insurance, we in the aggregate pay in premiums normally greatly exceeds the amount that we—again, in the aggregate—get back in settlement of claims. As we know, the insurance company has expenses, and it was set up to make a profit. So normally the insurance company will pay out over the long run less than the sum of the premiums paid in. Accordingly, the premiums we pay to an insurance company are normally less than the amount we would get in claims multiplied by the probability that we would have a claim; that is, the "expected value" or "mathematical expectation" of what the individual will receive from the insurance company is normally less than the amount he or she puts in.

But if this is so, why do we buy insurance at all? In one sense the answer is obvious, but it bears reflection for a moment. We need to reflect about the fact that the money we get if our house burns down means more to us than money does when we haven't had any such misfortune. So of course the answer to our question is that the insurance companies pay us money at a time when it is especially useful to us. And it is especially useful then because for most of us our house is a large part of our total wealth, so that if it burns down, we are made very much poorer, and we believe that when we are poorer, money will be worth much more to us—that is, we will "need" it more.

It is convenient here, as so often in economics, to use the language of utilitarianism, although in our context, using the word "utility" does not in general mean that we have to accept the controversial features of the philosophy of utilitarianism. From the foregoing, we can see that usually we get more utility per dollar after a catastrophe that leaves us much poorer than we do in normal times. Though we generally get less money, or expected value in money, out of insurance companies than we pay into them, we anticipate greater expected *utility* from the possible insurance payouts to us than the utility lost from the money paid out in premiums. In other words, the great number of "utils" we would get from any dollars the insurance company paid to satisfy our claims, times the normally small probability that we will actually have a claim, yields a product greater than that of the number of utils lost because we had to reduce our consumption marginally to pay the premium. The expected value in dollars of

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our transaction with the insurance company is negative, but the expected value in utility is bound to be positive for any rational purchaser of insurance.

This simple logic is quite relevant to the distribution of income and the question of whether the government ought to protect people against poverty. If, for the moment, we make the assumption (which Friedman and Savage do not) that what holds true for the individual when he considers the circumstances in which he might be poor, and compares them with his normal circumstances, also holds true for comparisons between people of normal or high incomes and people of low incomes,[5] then we already have a possible rationale for public programs to aid the poor. Whatever individuals may say about income distribution when they rehash the familiar ideological debates, their impartial and considered behavior in purchasing insurance for themselves and their families contains at the least a hint that probably low-income people on average get more utility or satisfaction out of marginal increments in income than middle or upper-income people do. Low-income people presumably usually get more "bang for the buck" out of a given increment of income that do those who have substantially higher incomes. There is, to put it mildly, much more to the matter (such as the impact of programs to aid the poor on the incentives to work and to save), and it is too early for any conclusions whatever. Yet we seem to have stumbled upon at least a possible argument for a more egalitarian distribution of income, and this is by no means the sort of thing one expects to find every day in writings in which Milton Friedman has had a hand.

V

There is, to be sure, another part of the Friedman-Savage argument, and it is a very interesting one. Insurance is not the only activity in which people give up money, not for some different good, but in return for some probability of getting back a larger sum. Gambling also has this same property, and Friedman and Savage correctly observed that many people not only buy insurance but also gamble. If we buy a ticket for the Irish Sweepstakes, we give up a small amount of money to pay for the lottery ticket and get in return a minute probability that we will win the grand sum. We also know, or ought to know, that the government of Ireland would not have established

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the Sweepstakes if there were not something in it for the Irish. And there's a very great deal in it for them; they pay the winner much, much less than the sum they collect from selling tickets. So it is essentially with all gambling; the total payouts are usually very much smaller than the total paid in. Yet gambling, Friedman and Savage pointed out, is commonplace.

By now, you can undoubtedly see it coming. Friedman and Savage emphasize that widespread gambling implies that, for a great many people, a dollar at their present level of income is believed to generate less utility or satisfaction for them than the average dollar of extra income they would have if they obtained a much higher income by winning a gamble. Though the expected return in dollars of most gambles is less than the amount ventured, the expected value of the gamble in terms of utility must be positive, or else the person would not have gambled. Using the logic offered to explain the purchase of insurance, Friedman and Savage conclude that, at least for the many people who gamble, the utility per dollar of consumption or income would be greater at the high-income levels they would be at if they won the gamble than it is at the level of consumption and income they are at when they decide to make the gamble. That in turn implies that the marginal utility of consumption rises for people who gamble as consumption levels rise; satisfaction or utility rises in greater proportion than income and consumption do.

If, as Friedman and Savage observe, most people buy insurance and also gamble, then we should, they say, infer that most people are at intermediate or middle-income levels that are inefficient in generating utility. The decision to gamble implies that the utility loss from the sums ventured is less than the expected utility gain, and with the actuarily unfair odds that normally prevail in gambling, this in turn implies that utility per dollar from the amount won must be appreciably greater than the utility per dollar of the amount ventured. After a sufficiently big gamble, the individual will be at a level of consumption that is efficient in generating utility; the person will either have won the gamble and be at the high level of consumption that is ostensibly efficient in generating utility per dollar, or have lost, in which case total utility is lower than before the gamble, but the person is at a consumption level that is efficient in generating utility per dollar of consumption. At the efficient levels of consumption that occur after the win or the loss at gambling, it pays to buy insurance

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to protect oneself against contingencies that would leave one at consumption levels that generated less utility per dollar.

What, then, would be the implication of this for the appropriate distribution of income? If we go somewhat beyond Friedman and Savage and again toss in the additional assumption that, on average, people in different income classes have much the same inherent capacities to enjoy consumption, then we get the conclusion that society would get more kick out of the national income if it had a distribution of income with relatively more people at high incomes and relatively more people at low incomes and relatively fewer with middle incomes. An egalitarian distribution of income would tend to put a larger proportion of society in the intermediate income levels and could reduce the total satisfaction obtained from the society's income. An unequal distribution of income, quite apart from any gain from the incentives it might provide, could have the further advantage of generating more utility out of a given income.[6]

For most of us, there is something profoundly counterintuitive about this last result. We shall see later that Friedman and Savage made some serious logical mistakes. Yet I urge the reader not to dismiss their argument out of hand, because it is an indispensable step toward a better understanding of appropriate public policies toward poverty and income redistribution. Indeed, I would strongly recommend reading the Friedman-Savage article, for the intelligent and careful reader is sure to find it a rewarding experience. Moreover, my account of their argument here is not really adequate; in largely avoiding the technical concepts and geometry or mathematics that are needed, in skimping on length, and in going at one point a step beyond their argument, I fail to do justice either to the subtlety or the qualifications of their argument. Despite its counterintuitive character and the strong ideological motives for attacking it, the Friedman-Savage argument stood entirely undamaged for more than thirty years; all the efforts to refute it failed, and in ways that any competent judge would have to agree were failures.

VI

Before going on to the shortcomings and, as I would like to think, the surprises that are hidden beneath the surface of the Friedman-Savage argument, it is necessary to turn to the work of another lead-

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ing thinker, the philosopher John Rawls.[7] There is an important relationship between Rawls's theory of justice and the strengths and shortcomings of the Friedman-Savage argument that, so far as I know, has never been considered before. Rawls's work is also subtle and complex, and there is again no way in which it can be adequately summarized in the space available here, but there is one feature of it that I must describe in a brief and impressionistic way. Rawls argued that, to some extent, we could get away from the biases arising from ideology and from conflicts of interest when debating moral questions if we could reflect about these questions behind a "veil of ignorance." The veil of ignorance is designed to make it possible for us to look at certain moral questions without knowing or considering how the different answers to the questions would affect our immediate interests. Behind the veil of ignorance, we could try to think of the possibility that we might be in any category of humanity—that we might enter the world healthy or unhealthy, able or dull, rich or poor, and so on. Behind the veil of ignorance, we could hope to abstract the particular characteristics we have in real life that give us vested interests on one side or another of a moral issue. The advantages of a veil of ignorance can best be seen by considering how two people may easily be able to agree, before starting a trip by car, how they will handle expenses in the event of a breakdown, yet disagree heatedly about how to do this if there has been no agreement in advance.

One conclusion that Rawls drew from this device is that there is much to be said for a free society—for a society that gives each person as much liberty as possible—so long as the person does not infringe upon the freedoms of others. We can immediately see the attractions of this if we put ourselves behind a veil of ignorance where we don't know whether we are going to be lovers of pornography or abstract art, vegetarians or omnivores, or whatever. Behind it, we see that a society that had a large degree of freedom would in general seem more appealing to us; whatever type of person we might happen to be when we entered it, we would be more likely to be able to satisfy our desires and to enjoy our preferred life-style in a liberal society than in one with lots of restrictions that might constrain what we wanted to do.

John Rawls also applied the veil of ignorance to the question of the extent to which we ought to protect people against poverty. But this

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part of his argument has by no means attracted the same degree of consensus as his argument for maximum liberty. Rawls argued that no inequality should be allowed in a society except when the inequality made the worst-off person better off. This is something you can justify behind the veil of ignorance, but only by assuming that the people behind it think only about the possibility of being the worst-off; they could not take any other possibility into account, even the possibility that they would be the *second* worst-off. This is an unsatisfactory and implausible condition. Consider, for example, the following question: Would we not think it morally desirable for the richest people in an exceptionally unequal society to share some of their income with the second to the worst-off if that could be done without cost and without adverse effect on incentives? Those who are the next to the worst-off could be very poor, and it might be a good thing to redistribute income from the richest to them, especially since this does not rule out giving more to the very poorest. In some sense, a dictatorship of the poorest person is what is entailed by this part of the Rawlsian argument, his "maximin" principle. If my sampling of the literature is representative, this feature of Rawls's argument has not been as persuasive as the work as a whole has been.

VII

Why is there such a striking contrast between the implausibility of Rawls's maximin principle and the great appeal of his general framework? It is instructive to ask whether in the back of Rawls's mind there was not some awareness of the Friedman-Savage argument. Just possibly, perhaps in some subconscious way, the Friedman-Savage result may have kept Rawls or some of his readers from using what would seem to be the natural calculus to use behind the veil of ignorance—an expected utility calculus. If Rawls had asked behind the veil of ignorance what type of distribution of income one would prefer, and if he had combined that question with the Friedman-Savage results, he would have been forced logically to come up with the conclusion that one would prefer social arrangements that generated great inequalities of income. Whether it is historically accurate or not, it is interesting and intellectually useful to imagine that the unattractiveness of the result one gets by combining the veil of ignorance with the Friedman-Savage finding tended to keep Rawls and

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some of his readers from using the veil of ignorance in what would seem to be the natural way.

In any case, we seem to have a dilemma. If we use the Friedman-Savage finding, we get the strange counterintuitive result that we ought to have highly unequal incomes, whether any improvement in incentives flows from the inequality or not. On the other hand, if we follow the conclusions of Rawls, we end up with the much too narrow focus on the very poorest. Is there any escape from this dilemma? Yes there is, and its resolution, or at least what seems to me to be a resolution, arose serendipitously. Two colleagues, Martin J. Bailey and Paul Wonnacott, and I happened to discover a compelling (and, so far as I know, undisputed) refutation of one part of the Friedman-Savage argument. It will turn out, as I shall soon attempt to show, that this discovery also lets us use Rawls's insights in a new and more convincing way.

The Friedman-Savage argument about gambling is not only counterintuitive, but also demonstrably wrong, or wrong in ways that all competent parties of whatever ideology will concede. Unfortunately, the logical demonstration of the error in this argument is inevitably fairly technical, and it would not be appropriate to present it completely or rigorously here. Those who wish to check every step of the argument can consult the Bailey-Olson-Wonnacott article in *The American Economic Review*.[8] It is easy, though, to convey a sense of the flavor of the Friedman-Savage mistake. Very loosely, we can think of the matter in the following way: suppose it were true that at very high levels of consumption or income we got a tremendous bang for the buck, and that at very low levels, we also got a tremendous amount of utility per dollar. To shift to the efficient levels of consumption, we would not have to gamble; we could accomplish this by borrowing and lending. We could, for example, live for a time at the low levels of consumption that bring a high amount of utility per dollar and thereby save a lot of money. With these savings, we could live it up later, consuming at the high level of consumption that, by assumption, is also efficient in generating utility per dollar. Alternatively, we could borrow and live high-on-the-hog now and live at a low level of consumption later. Bailey and Wonnacott and I have shown that, in almost all circumstances, borrowing and lending to obtain alternative high and low levels of consumption dominates (i.e., is by all criteria superior to) Friedman-Savage gambles. It would

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require a long detour to prove why this is so,[9] but in essence it is because our "rate of time preference" is usually not equal to the interest rate, so saving or alternatively dissaving is, in the assumed conditions, bound to bring one a gain.

But do most people save in a Spartan fashion and consume very little in order to live high-on-the-hog later, or spend wildly out of borrowing and drop to low levels of consumption later? These are by no means the most common types of behavior. Rather, people borrow and lend to *even out* their level of consumption. This shows that the level of utility per dollar of income or consumption diminishes with income. If alternatively high and low levels of consumption generated the most utility from a given permanent income, why would people strive to even out their level of consumption? Another problem with the Friedman-Savage gambling argument is that it entails only a single big gamble, one that would result in the gambler being at one or the other efficient levels of consumption. In fact, we observe that most people who gamble do so repeatedly. Repeated fair gambles tend to leave a person at the same level of consumption he or she started with, and repeated unfair gambles will merely tend to make one poorer. Thus, for these reasons and partly for others, we can be sure that most gambling is not motivated by the Friedman-Savage logic, but is rather due to a taste for adventure or a failure to know or comprehend the odds.

In short, the Friedman-Savage argument about insurance holds, but their argument about gambling does not. The demand for insurance and the observed tendency to even out consumption suggests that there is a diminishing marginal utility of income. So the same method Friedman and Savage used, when corrected for logical errors and properly supplemented, turns out to provide a very strong case for limiting the degree of inequality in the distribution of income.

VIII

Though it is the case that, other things being equal, more utility would be obtained from a given national income when that income is distributed relatively equally, all other things are *not* equal. This can be seen if we look again at the insurance market.

Suppose we consider what happens when we go to buy fire insurance, or for that matter, most other kinds of insurance. In general,

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we cannot get 100 percent insurance; that is, we are not usually allowed to insure ourselves completely against all loss. This is so simply because of what the insurance industry calls "moral hazard." This is the increase in the likelihood that the contingency insured against will occur because of the insurance. If the entire value of houses is insured, the likelihood of fire goes up. If we would lose nothing from a fire, why take precautions to prevent it from happening?

Suppose we imagine a private insurance company that offers us insurance against unemployment. Any such company has the problem that the people who are not planning either to work very hard or to maintain their skills will know that they have a greater likelihood of unemployment than others. So these people are more likely to buy any private unemployment insurance than would the population at large. That would mean more payouts for the insurance company, and that in turn means higher premiums. This could make this private unemployment insurance unattractive for everyone, and for just this reason, private unemployment insurance is very rare indeed. This is known as the problem of "adverse risk selection," that is, that the people more likely to have a claim will be more likely to buy insurance. There is no way for a private insurance company to get around this problem in cases where it cannot get information about the risk each individual faces, and the individual at the same time has a good idea of this risk.

A society can get around this problem to some extent by having compulsory governmental insurance that covers everyone. This is, of course, what has been done in the case of unemployment insurance. Indeed, the whole welfare state that Gaston Rimlinger discusses so well in this volume can best be understood as government social insurance that is universal and compulsory, and provided in large part because we cannot buy comparable insurance in the market because of adverse risk selection.

In short, our analysis of insurance and the tendency of people to even out consumption levels leaves us with the conclusion that egalitarian income distributions, other things being equal, generate more utility. Our analysis of adverse risk selection shows us that some types of insurance cannot be provided by the market, so that we need some welfare state types of policies.

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But what about moral hazard? This increase in the likelihood that the event insured against will occur is not eliminated or even ameliorated by having welfare state policies. We can see that if unemployment insurance replaces 100 percent of the income we lose when we quit, then we have no incentive to work at all. The familiar idea that an excessively generous welfare state weakens the incentive to work and to save is true. We can see the truth of this, whether we are on the left or the right, simply by observing the insurance market. Its very operation shows that there is a strong case for an egalitarian distribution of income, and it also shows that the government must play a role by making some programs of social insurance universal. But the insurance market also shows that *any* kind of protection against adversity, whether private or public, creates moral hazard. If you insure too much, you lose output, you take away the incentive to produce.

So we are left with the familiar and commonsense idea that there is much to be said for a more equal distribution of income—a more equal distribution of the fruits of the nation's orchard—because it yields more satisfaction. But the amount produced in this orchard, as many have said before, will indeed depend on the incentive to work in it, and that in turn will depend on the way we distribute the fruits. This is hardly a new conclusion.

Yet this conclusion has been arrived at by a novel method and one that is, more than any known alternative, readily amenable to objective research. All of the steps of my argument are subject to either logical demonstration or to empirical testing. We can tell from the way people buy insurance, and from how much they buy, and from observing the moral hazard in the insurance market, something about how far to go in providing aid to the poor. We can debate and research what public policy ought to be, moreover, without being misled by the unsuitable language of the literature on human and legal rights, and without any need for the outdated ideologies of the Left and the Right.

ENDNOTES

[1]Most of the exceptions, such as some dictatorial ministates in the Persian Gulf, are readily explained by unusually valuable holdings of natural resources.

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[2]See my *Rise and Decline of Nations* (New Haven: Yale University Press, 1982).

[3]There is, however, a danger that the foregoing argument might be misunderstood or pushed to an untenable extreme. Though the word "production" is not usually used in discussions of law and order, we must recognize that law and order must also be produced and that this production requires some resources, and that law and order is in turn required if human rights and liberties are to be protected. In the advanced and stable democracies in which there is something of a consensus on certain basic freedoms, the cost of producing law and order is so small we can normally neglect it. In societies that are suffering anarchy, it can, on the other hand, cost quite a bit to establish law and order. The problems of Lebanon in recent years illustrate that the cost of law and order at times can even be prohibitively high. In anarchies, however, the concept of legal "rights" is essentially without meaning, since there is no effective legal system in which these rights may be enforced, and the whole language of human rights is also no longer very helpful. If law and order is absent, historical experience suggests there is no longer any consensus in support of the familiar rights and liberties; the desire for security overwhelms everything else. In feudal Europe, for example, there were cases of people who voluntarily enslaved themselves to those who might be able to protect them. There are newspaper reports suggesting that at the very time this paper is being written, the communal violence and lawlessness in Sri Lanka has reached a point where looters are being shot on sight. Abhorrent as such measures are, they nonetheless illustrate that legalistic language of human rights discussions are not very helpful in analyzing conditions of anarchy.

[4]*Journal of Political Economy* 56 (August 1948): 179-304. See also Milton Friedman, "Choice, Chance, and the Personal Distribution of Income," *Journal of Political Economy* 61 (August 1953): 277-90.

[5]This is admittedly a nontrivial assumption, but if there were no constraints on the use of technical methods, I could demonstrate here that if everyone has a diminishing marginal utility of consumption, that alone would entail that sufficiently inegalitarian distributions of income would generate less utility than do some less inegalitarian distributions of a national income of the same size. The assumption that everyone has the same capacity to obtain utility out of a given level of consumption, in combination with the finding that there is always a diminishing marginal utility of consumption, entails that a perfectly equal distribution of income would generate the greatest utility that could be obtained from a national income of any given size; it would be the best policy were it not for the fact that a complete equality of income would eliminate all incentives to work and to save. I have not mentioned this implication in the text because I am making the assumption that different income groups do not differ in the extent to which they can get utility out of consumption for simplicity and ease of exposition for lay readers, rather than out of any certainty that this assumption is descriptively accurate. There is, as Amartya Sen has pointed out, also the problem of morose individuals who will be unhappy whatever their level of consumption. But, as Sen also argues, this type of problem has little or no relationship to the problem of poverty and income distribution, so I ignore it here.

[6]This requires the same assumption as in note 5, and Friedman and Savage do not make this assumption in their joint article. Friedman's further argument in "Choice, Chance, and the Personal Distribution of Income" does, however, at

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least come very close to leaving the impression that a given national income would generate more utility if it were unequally distributed.

[7]*A Theory of Justice* (Cambridge: Harvard University Press, 1971).

[8]"The Marginal Utility of Income Does Not Increase: Borrowing, Lending, and Friedman-Savage Gambles," *American Economic Review,* June 1980.

[9]See Mancur Olson and Martin J. Bailey, "Positive Time Preference," *Journal of Political Economy* 89 (1) (1981): 1-25.

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David Tracy

Religion and Human Rights in the Public Realm

SHOULD ANYONE WHO IS NOT A RELIGIOUS BELIEVER take any interest in the debates on human rights within the religions? The debate in the wider public realm is already complex and controverted; moreover, the actual human rights record of the religions has been sufficiently ambiguous to tempt the wider culture to stay at a distance. Perhaps Jacques Maritain, who was no stranger to either reason or religion, was right when he urged all parties to the UN Charter on Human Rights—communists and capitalists, secular and religious, Buddhists, Muslims, Christians, Jews, Hindus—simply to sign the document for their own reasons, with no questions asked of one another as to why they agree. If they did ask, Maritain observed ironically, no one would ever sign! This may be the best we can do intellectually in a pluralistic world. Surely, if the only alternative is not to sign and not to act on human rights, then by all means let us not ask one another *why* we agree on certain conclusions and principles.

A colleague of mine, a historian of religion, once said, "I can't define religion, but I know it when I see it." Perhaps that is true of human rights as well. For even those who cannot agree on a definition of, much less a list of priorities for, human rights at least know it when they see their all too obvious violations.

And yet, before we accept Maritain's counsel of despair, it might be worthwhile to try again by focusing on these perplexing questions. From the viewpoint of the religions themselves, the question is: Can the religions enter the public realm of discussion of human

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rights on the public realm's own terms? From the viewpoint of the public realm, the question is: Can the rest of us accept in principle some of the conclusions of the religions on human rights even when we do not accept their explicitly religious or theological warrants? If we do, what reasons can we give one another for those agreements?

A prior question also needs reflection: What is this public realm into which both religious and secular interpretations of human rights must enter? For it is in the public realm where finally we all either do or do not meet. It is the public realm where religion, too, must address its questions and its conclusions on human rights, not on its own inner theological warrants, but in terms acceptable, in principle, to the public realm itself.[1]

RELIGION AND THE PUBLIC REALM

In a pluralist culture, it is important to know what will and will not count as public, that is, what is available to all intelligent, reasonable, and responsible members of that culture despite their otherwise crucial differences in belief and practice. A public realm assumes that there is the possibility of discussion, of argument and conversation, among various participants. The only hope for such discussion in a radically pluralist culture seems to be one based on reason. But *is* there a shared or public understanding of reason?[2] If reason can only function instrumentally, for example, then the culture can (reasonably) agree on the appropriate instrumental, especially technological, means to achieve its ends, but the ends—the shared values—are, by definition, private, decisionistic, nonrational. And this problem—the so-called problem of instrumental reason and resultant technicization of a once public realm—is intensified by the contemporary insistence (in philosophy, ethics, and theology alike) that reason itself has a history. To affirm the latter is to pose yet another problem for publicness, that the various models of reason are themselves *in some sense* dependent on particular social, cultural, historical forces. Has publicness itself now been rendered private?

The fact that the problem of the historicity of reason has surfaced, most tellingly in reflections upon the truth-claims of the hard sciences,[3] has only made the problem of the public realm that much more difficult. For the rule of a purely instrumental reason—and thereby the depolitization and technicization of a once public

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realm—can only be further advanced if the checks and balances on technical reason via the methods of verification and falsification in the hard sciences are now interpreted as in some crucial sense historically bound.[4]

If the problems of publicness and rationality (and thereby of the public realm) are as difficult as I suggest above, then the introduction of religion into this debate may seem singularly unpromising. What seems more obviously private than religion? Religion can seem private not just in the sociological sense of privatization, but private in the philosophical sense as being "without reason," decisionistic, undemonstrated, and perhaps undemonstrable.

In this discussion, one crucial need is to shift the major focus of the debate away from origins to effects. More exactly, one can agree with (indeed, learn thankfully from) the present rediscoveries of the historical and communal (narrative)[5] roots or origins of all models of publicness and reason. And yet, we should remain unpersuaded by their conclusions on effects: namely, that all we have are particular traditions (of both reason and religion) whose particularist effects are as nonpublic and nonshareable as their origins.

In that scenario, there would be no authentic public realm where a public, shared reason could rule. There would only be particular traditions that can either bear witness to their brand of truth, make temporary coalitions with other traditions, or become, in a once-public but now technicized and depoliticized realm, merely particularist interest groups struggling with and against other equally particularist groups. The departure of shared norms for reason and publicness may mean that reasonable argument may exit from the public realm. But the exit of reason is not the exit of power—as the quick contemporary slide from witness and coalitions to interest groups in the present public realm starkly demonstrates.

The issue of publicness can be posed anew by reflection on the cultural phenomenon of the "classic": Is it or is it not the case that, however particular in origin and expression any classic work of art or religion on human rights may be, its effects are nonetheless public. To shift the questions of art and religion (and even, as suggested above, reason itself) away from origins to effects is a first step to providing a more adequate list of candidates for public discourse. My own work in the nature of the classic leads me to this conclusion,[6] for every classic work of art or religion is highly particular in

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both origin and expression, yet deeply public in result. As reception-theory in modern hermeneutics attempts to show, even if we cannot agree on the origins of a classic work of art, we can still agree in some measure on its effects.[7] Those effects can only be described as public—that is, shared, open to all human beings. The effects of a classic work of art or a classic religious tradition are public in that they make disclosive and transformative possibilities available to all. Their publicness, indeed their mode of truth, is precisely their disclosive and transformative suggestion of possibilities. The spectrum of responses to any classic varies widely, ranging, at one end, from a merely tentative sense of resonance, to the other end, where the experience is more appropriately described as a shock of recognition. In *every* case along the entire spectrum, however, *some* disclosure or transformation is, in fact, present, and present as a communicable, shareable, public possibility—a possibility, that is, about which the public can both converse and argue.

If strictly positivist and instrumentalist notions of reason and publicness are alone allowed, then there can be no public discourse on the bearing both art and religion have on issues of human rights. Then, as the public realm itself becomes more and more scientized and technicized, art becomes marginalized and religion privatized. But if, to employ Aristotelian terms, poetics and rhetoric are also allowed to make claims to truth, then the role of reason itself is properly expanded and properly focused in its *de facto* effects, not its speculative origins. As Stephen Toulmin has observed, the rediscovery of Aristotle's *Topics* is also a rediscovery of the claims to truth, to shareable, public meaning in rhetoric itself (and, by my earlier expansion in this essay of Toulmin's suggestion, in poetics, ethics, politics, and metaphysics). I do not pretend to have defended this expanded list of candidates for truth-claims here. Yet this much is, I believe, warranted, even on this limited basis: the problem of the role of religion in the public realm needs, above all, to focus on analyzing a more comprehensive notion of reason than positivism offers, and thereby on analyzing religion's own relationships to that more comprehensive notion. We can achieve this if, as previously suggested, we shift the focus from origins to effects. In that shift, the role of any classic (and here, the classics of art and religion are illuminating for the analogous nature of the classic models of reason itself) is the role

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of a phenomenon that is always particular in origin and expression yet always public in effect.

In American culture, for example, the phenomenon once called "Atheists for Niebuhr" is worth puzzling about. The fact is that Reinhold Niebuhr's interpretation of the disclosive and transformative power of the Christian symbols of sin-grace provided public resources for understanding aspects of our common, shared life, even for those who did not share Niebuhr's own explicitly Christian faith. This phenomenon of atheists for Niebuhr is not, therefore, as paradoxical as it at first seems. Insofar as there exists a full spectrum of possible responses to the disclosive power of any classic, shareability—or publicness—is achieved across the entire spectrum of responses despite all other differences in response. Anyone who both experiences and expresses an interpretation of any disclosure of any classic thereby shares that possibility with *all* others—whether those others prove to be ones for whom a full shock of recognition (as, religiously, "faith") has occurred or those who have only sensed some resonance.

On this reading, both the classics of art and the classics of religion are candidates for the public realm. It is not the case that only believers in a particular classic (i.e., those who have experienced a full shock of recognition) can interpret these classics properly, publicly. All members of the community of interpretation can and should risk interpreting them to see if they provide some disclosive and transformative possibility for the public realm itself. A public realm is public, on this reading, because it is grounded in consensus. The public realm as a community of true consensus is both a community of inquiry (argument) and a community of interpretation (conversation with the classics). The original question can now be posed more sharply: Should the religious classical statements on human rights be considered responsible candidates for conversation and argument in the public realm?[8]

RELIGIOUS RESOURCES FOR HUMAN RIGHTS: THE TEST CASE OF THE CHRISTIAN TRADITION

Within the last twenty years, the question of human rights has been addressed by most of the major world religions in both theory and practice. In the Christian case alone, the literature is immense.[9]

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Indeed, there is hardly a major Christian denomination that has not addressed the issue at great length. These inner-theological discussions are important, of course, on their own terms for an understanding of human rights on inner-religious terms. Equally important, theologies provide a major motivation for concrete actions on human rights by committed religious individuals and communities. My present interest, however, is not in the question of the inner-ecclesial warrants for the religious affirmation of human rights, but in the distinct question of the availability to a wider public of the principles and conclusions of the religions on human rights issues.

For the latter question, I must assume that my prior argument for the nature of the public realm is basically sound. If it is, then it follows that religious symbols, like the symbols of art they so resemble, should be considered available as resources for both conversation and argument in the wider public realm. On the question of human rights, the religions may provide suggestive resources for the wider public realm on two central human rights questions, both of which are highly controverted: What are the foundations of human rights? What are the relationships of priority among different human rights?

I do not, of course, introduce these familiar and difficult questions with any claim to resolving them with purely religious and theological warrants. I introduce them, rather, with the more modest but still controversial claim that religious symbols do provide suggestive possibilities for asking these questions in the wider public realm. The disclosive power of these symbols, I maintain, is open for the inquiry and scrutiny of all who are willing to risk an interpretation of them. That interpretive risk may be grounded in a response of the full shock of recognition that religious participants call faith. Then the discussion takes an inner-ecclesial turn, as in the search for the theological foundations of human rights within the various churches and synagogues. But a public interpretation may also be grounded in a response that is simply some tentative sense of resonance to the symbols. In this case, the religious symbols, like the symbols of art, are not strictly believed in, but as disclosive expressions of the productive imagination available for the interpretation and scrutiny of any reflective human being, are considered public possibilities.

This claim is not as counterintuitive as it may at first seem. Consider, for example, the public role that religious symbols have occa-

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sioned for other than believers in the recent past. Many examples suggest themselves: recall the creative use of religious symbols as disclosing new societal possibilities by a Martin Luther King, Jr., or a Mohandas Gandhi, or even, in the most remarkable use of biblical symbols in American history, an Abraham Lincoln. It is true, of course, that believers and nonbelievers will respond differently to the rhetoric and actions of a King, a Gandhi, or a Lincoln. They will respond, if you will, with different degrees of intensity or with different motivations. Or, as I prefer to state the differences hermeneutically, they will respond at different points along the entire spectrum of possible responses.[10] The response may simply be the thought, with Dorothy van Ghent, that "something else may be the case," or, with William James, a response may simply bear the sense that "something more" than we usually think possible now suggests itself as possible.

In the latter cases—and these are the cases that count for the public realm of a pluralistic culture—these religious symbols of human rights can be interpreted as expressions of the productive imagination, which can disclose new possibilities of human solidarity, and of personal and communal self-transcendence. More than abstract principles and formulae, concrete symbols—including religious symbols—seem able to disclose the reality of human solidarity and, in that basic sense, one possible foundation for human rights. Although rooted in particular narrative communities of witness, these symbols, at their classic best, also seem disclosive in their effects to a wider public. Rooted, too, in an encompassing belief in the reality of God and in human beings as the living image of God, the Jewish and Christian religious symbols on human rights nevertheless can also speak in distinct but related ways to those who do not share those grounding beliefs.

The most general reason that this can occur remains the fact that the public realm can include both argument and conversation with any classic. The more specific reason, in the case of the religious classics, is that religious questions are questions that any reflective human being can ask. These questions—the so-called limit-questions of religion—questions of finitude, mortality, anxiety, fundamental trust, some order in the universe disclosed in science and cosmology, and for human rights, the question of the possibility of radical hu-

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man solidarity amidst suffering, oppression, and alienation—are questions that will not down.[11] What little, painfully little, I understand of the radical Buddhist notion of compassion toward all living things I do not know on internally Buddhist terms. But that this symbol is disclosive of the reality of the solidarity of all living beings, I can affirm. When nonreligious persons respond to the rhetoric and actions for human rights of a King or a Gandhi, they do not respond on inner-Christian or inner-Hindu warrants. But they do respond—and they do so publicly. Our communal need is the search to find better ways as a community, a public, to allow these disclosures to enter as legitimate candidates for all to consider in the public realm—as conversation with classic symbols and as argument with the principles and warrants suggested by those symbols.

In that context, recent Christian discussions of human rights make a good test case for my wider claim. What is most striking about the theological literature is the modern insistence that Christian self-understanding demands an affirmation of human rights. The claim, on inner-Christian grounds, is that all the major symbols and doctrines of Christian faith—creation of all by the one God, the universal graciousness of God toward all, the redemption of all by Christ, the demand for radical neighbor love—all insist upon a human solidarity that demands a Christian affirmation of human rights.[12]

When one examines the more recent documents of the various Christian churches more closely, moreover, certain sea changes seem to have occurred. These changes can serve as suggestive of how religious symbols (in this case, Christian symbols) might be rendered available to the wider public realm and not only to the community of believers. The sense of human solidarity manifested in the central Christian symbols may prove disclosive even without the explicitly Christian theological warrants cited above. Indeed, that same sense, when conceptually developed into the central category of "the dignity of every human person," may prove even more valuable a resource for reflection and argument in the public realm.

It is true, of course, that the Jewish and Christian belief that human beings are the living image of God is grounded in the affirmation of the sovereignty of God. And yet, the conceptual category derived from this theocentric belief in human beings as images of God, the human person—not the individual, but the person as intrin-

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sically related to society, history, the cosmos—bears discussion and scrutiny in the public realm itself, even for those who do not share its explicitly theistic warrants. For the notion of the dignity of the human person suggests a category that is not reducible to traditional liberal notions of the "individual" or to traditional Marxist notions of "society." In sum, a disclosive classic religious symbol, highly particular in its religious origins, suggests a category—namely, the dignity of the human person—that deserves scrutiny and argument in the public realm on that realm's own terms.

When one examines the shifts in interpretations of the religious symbols and their attendant principles in contemporary Christianity, moreover, further possibilities for the public realm seem to follow. But before analyzing the statements and actions of the Christian churches in our own period, it is equally important to recall that official Christian endorsement of human rights has its own ambiguous and troubled history. From the theocratic models of some Reformed communities through the sacralism of traditional Russian orthodoxy and the vigorous obedience to the state of some Lutheran orthodoxies, to the Syllabus of Errors of Pius IX, several traditional Christian theological temptations to absolutism and exclusivism have marred the history of Christian involvements in the modern struggle for human rights. How each of the major Christian churches learned not only to tolerate an affirmation of human rights, but to embrace that affirmation on inner-Christian principles as well, is a complex story that has often been told.[13]

The Roman Catholic story is at once the most complex and the most intriguing.[14] How this major institution moved from the condemnations of modernity in Pius IX through the genuine affirmations of the "person," the "common good," and "social justice" (although in a still hierarchical, paternalistic, and organic set of metaphors) from Leo XIII to Pius XII, to the affirmations of religious freedom and openness to the world of Vatican II and the firm and systematic affirmation of civil, political, social, and economic rights of John XXIII (in *Pacem in Terris*), to the yet more radical statements of Paul VI (in *Populorum Progressio*), the Synod of Bishops, the Latin American Medellin conference, and the recent American Bishops' statement on nuclear war and the present "solidarity" emphasis of John Paul II in *Laborem Exercens,* to the present inner-Catholic conflicts over various concrete strategies to implement those human rights in

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different cultures, politics, and societies, is an extraordinary history.[15] To tell the story well—as many have tried—is to appreciate anew the intricacies of any church's complex relationships to contemporary history.

Since this article speaks of the contemporary setting (where an affirmation of human rights is both clear and matched by concrete actions in all the major Christian churches), the ambiguous histories of the struggle in each of the churches to forgo former alliances with theological absolutisms, sacralisms, and paternalisms, and to develop firm inner-ecclesial affirmations of the whole range of human rights, must simply be noted here rather than developed. The Christian churches, in various ways, have tried to develop in modernity some "third way" between capitalism and communism, between sacralism and secularism, and, more to the present point, between traditional liberal affirmations of civic and political rights and Marxist affirmations of social and economic rights[16]—no small agenda. And yet, as we shall see below, such agendas have emerged across the Christian churches as they attempt to develop principles and actions that are warranted by both inner-Christian principles and open to the critical scrutiny of a wider public. If the churches can develop such principles where both civic and political rights *and* social and economic rights can be coherently affirmed and interrelated on both inner-Christian and wider public grounds, these principles deserve the kind of critical analysis usually accorded only to more obviously secular positions.

Given the impasse reached by both major secular traditions—liberal and Marxist—this could prove to be important. On the liberal side, the problem has been admirably stated by one of the principal liberal theorists, H.L.A. Hart: "It would be pedantic to point out to [the poor] that though they are starving, they are free."[17] On the Marxist side, the problem has been graphically stated by one of the Russian dissidents: "A well-fed slave is still a well-fed slave." Christians, Jews, and other religious thinkers believe that they can suggest some intellectual resources that will allow an affirmation of both UN Human Rights Covenants, and thereby—and without incoherence—of both traditional liberal-democratic concern with civic-political rights, and Marxist and socialist concerns with social and economic rights. Many religious thinkers also recognize that if those resources are to be made available to a wider public, they must be articulated on grounds which, in principle, that wider public can accept.

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In one sense, a concern with human rights is becoming something like an international civic religion. But if that reality is not to dissipate before the conflict of ideologies that surround and permeate it, some reasons must be forthcoming to affirm its grounds. In that sense, the developments, both theoretical and practical, on human rights across the religions (developments, to be sure, themselves permeated by both liberal-democratic and Marxist thought) merit reflection.

For the present purpose, therefore, I will note three major recent developments in the Christian context that seem promising for the present situation. First, in the last twenty years there has been a concerted effort across Christianity to take inner-Christian pluralism as an enrichment, not an impoverishment. This inner-Christian ecumenical attitude has occasioned a more ecumenical formulation of a Christian theological position on human rights.[18] This has meant that although Catholics or Reformed or Lutheran or Evangelicals or Anglicans or Orthodox continue to formulate theological responses in fidelity to their own traditions, they also have made noticeable strides in formulating joint principles. Indeed, it is just here that a more ecumenical Christian formulation of the *imago Dei* symbol as disclosing both a sense of radical human solidarity and the principle of the dignity of every human person has come to the center of the discussion.

This inner-Christian agreement, in turn, has occasioned a greater openness to the symbols of other religious and nonreligious traditions. For example, on inner-Christian grounds, the Catholic traditions on human rights have become far more open to the classical Protestant insistence on the disclosive power of the biblical symbols and the pervasive reality of sin in history. The Protestant traditions, in turn, have become more cognizant of the need to show how the disclosive power of the biblical symbols might be available, in some manner, to all persons, not only to Christian believers. Both traditions have become far more cognizant of the historical relativity that accompanied many of their earlier formulations on human rights: Catholics, for example, are far less confident in traditional ahistorical accounts of natural law theories than they once were, and far more aware of the need to appeal to historically conscious uses of reason in contemporary philosophy and social science. Lutherans, as a second example, have become widely suspicious of traditional formulations

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of the 'Two Kingdoms' doctrine and of the need to challenge any ahistorical claims for the orders of creation.

All these Christian traditions, in sum, have become more aware of the need constantly to reformulate their positions on human rights in accordance with their own ecumenical Christian commitments and the needs and demands of all uses of reason in an ever-shifting historical situation. Indeed, this first shift to inner-Christian ecumenism within an emerging context of global religious and secular pluralism has occasioned the two other major shifts.

The second shift is in the actual interpretation of the religious symbols chosen as disclosive of human solidarity and the dignity of the human person. More concretely, as the Christian churches have become more involved in the struggle for human rights, and especially against human rights violations in Eastern Europe, South Africa, the Philippines, or Latin America, or in the civil rights, women's rights, and economic rights movements in the United States and Western Europe, the traditional relative optimism of the *imago Dei* theme has been chastened.

Christians continue to believe that all human beings are made in the image and likeness of God. They have become far more sensitive, however, to the fact that this theological indicative, in the present world, must also function as an imperative. The task of human beings, on this newer reading, is to actualize what they are potentially, and to actualize that reality in the struggle for a *not-yet* achieved human solidarity, for a *not-yet* acknowledged dignity of every human person: for the need, in sum, for human rights in their full social, economic, cultural, political, civic, and religious dimensions.

As the entry of the crucial adverb not-yet indicates, the sense of the priority of the future over the present and the past has come to dominate much Christian reflection on human rights. Theologically, this is in keeping with the reemergence of the biblical eschatological symbols as at the center, not the periphery, of the New Testament. This new Christian theological emphasis on futurity has been greatly aided by the major developments in biblical scholarship in the future-oriented eschatological background of many New Testament texts. Still, this theological-biblical rediscovery of eschatology has not been the major impetus for the newer Christian Euro-American political theologies, the feminist theologies, and the Third World (especially Latin American) liberation theologies.[19] Rather, these newer theolo-

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gies have been largely occasioned by a concentration on concrete situations of massive global suffering. Indeed, suffering is a primary contrast-experience by means of which either individuals or whole peoples and cultures are impelled to recognize the radical contrast between what is and what ought to be. As such, attention to the concrete suffering of whole peoples, cultures, and races has proved a radical interruption of traditional theological interpretation of the major symbols of the faith (including the key symbol of the *imago Dei*).

The kinds of massive global suffering that result from human rights violations in both the civic-political and the socioeconomic orders force Christians and others to interrupt their usual interpretrations of what reality is and recognize first what it is not. To affirm that all persons are made in the image and likeness of God, and then to face what the lives of millions of persons caught in the bondage of institutionalized violence and massive global suffering actually consists in, forces a recognition of the radical nonidentity between that primary theological affirmation and the concrete actualities of the contemporary world. This sense of nonidentity, of interruption, brings about a rethinking of the eschatological religious symbols of Judaism and Christianity. Aspects of the tradition that were formerly largely forgotten, even repressed, now return with new power: the memory of the suffering of the oppressed and the anticipatory hope for all; the apocalyptic movements and other marginalized groups in Christian history (especially women) with their powerful sense of the not-yet and their vigorous criticisms of reigning empires and ideologies; an understanding of sin as not merely individual but social and systemic; the sense that human beings as the image of God *are* that image but, given the concrete structures within which they live, are *not yet* freed to become what they are; the conviction that the central command to neighbor-love becomes unreal if divorced from the demands of justice; the insistence that the systemic distortions in older models of Christendom must yield to a re-Christianizing of persons, small communities, and institutions (including the institutional churches); the sense of a need for a solidarity of praxis among all human beings, among all willing to face the interruptive actuality of such massive global suffering.

For the wider public realm, this suggests that the religious eschatological symbols expressive of Christian convictions on human soli-

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darity and the dignity of the human person can be seen as disclosive utopian symbols—disclosive of both shareable human possibilities and transformative ethical imperatives. As Ernst Bloch argued in his revisionary Marxist recovery of the utopian and eschatological symbols of Western culture, all such future-oriented symbols can be accorded a public status, for utopian symbols both disclose shareable human possibilities and expose the reality of the not-yet, the ideologies, in our present tortured actuality.

In sum, religious eschatological symbols, like all utopian symbols, may also be accorded a status in the public realm like the more familiar role of the so-called contra-factuals. Like such analogues in the realm of abstract principles as ideal-observer theories or ideal-speech communication situations, all utopian symbols can help the public discussion of human rights. They do so both by showing new possibilities and, through these imaginative constructs, by exposing the massive not-yet in the ideologies, the systemic distortions, not mere errors, pervading concrete historical actuality. All these utopian and eschatological realities (both abstract principles and concrete symbols) become public candidates as possible responses to Kant's third classic question for the public realm: What may we hope for? Insofar as we hope for human solidarity and for the global recognition of the dignity of every human being, we serve ourselves poorly by rejecting the classic utopian and eschatological symbols and contra-factual principles as—without remainder—wishful, fanciful, or private. Hope is responsible and public; ideology is just as clearly actual and public.

The third shift in the contemporary Christian theological context is related to, but not identical with, the first two shifts. In fact, the first two shifts were largely new responses to the question of the Christian theological foundations for human rights. I suggested above some ways in which those responses might also prove helpful in the discussion of human rights in the wider public realm. A further question is whether recent Christian responses to the second question—on the relationships of priority among human rights—might also prove useful for the wider discussion.

The briefest way to describe this development is to state that most of the Christian churches, in their earliest entry into the question of human rights, were principally concerned with the right of religious freedom and some other attendant civil, political, and economic

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rights. Now most of the churches—here, the Vatican and the World Council of Churches are genuinely representative—are persuaded of the priority of social—that is, vital, economic, cultural—rights.

Before critics assume that this is further evidence of Marxist infiltration of the Christian churches, a few facts are worth noting. First, in keeping with the understanding of human solidarity and the dignity of the person as constituted by relationships to others, and to society, history, and the cosmos, it follows that the "person" thus understood is not an isolated individual. The person as principle, on this reading, does lend itself to emphasizing the priority of social rights. Second, the shift to a sense of the eschatological not-yet and to the kinds of ethical imperatives implied in that new prominence has also occasioned a retrieval of the prophetic strand of both the Jewish and Christian traditions. For it is the prophetic strand, after all, that gave birth to these eschatological symbols.

The prophets in both traditions do express a major preference for the poor, the oppressed, the marginalized. In that sense, the symbols of prophetic witness are symbols of both religious and political liberation. As Eugene Genovese has documented through his study of black religion in gospel music and spirituals, this liberation aspect of Christianity was better understood by the Christian black slaves than by their Christian white masters.[20] This principle of a preference for the poor does not translate readily, to be sure, into an easily agreed-upon political program—as the recent differences between Pope John Paul II and some Marxist Catholics in Latin and Central America, or as the recent disputes over some policies of the World Council of Churches, show.

But this principle of preference for the poor (analogous to, but not identical with, the kind of preference John Rawls states in his priority principles[21]) does suggest a principal reason that the priority of social rights has come to the fore in much contemporary Christian thought. If this priority principle becomes an occasion to abandon concerns with civil and political rights (including the right of religious freedom), then the basic principle of the dignity of the human person in all of his or her dimensions would have been abandoned. Thus far, with some notable exceptions, this is not the case; nor, short of self-contradiction, should it be. Whatever concrete strategy is embraced, preference should not be equivalent to selectivity of concern: for example, the recognition of the radical loss of the social and economic

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rights of the poor in the Third World should also lead to a recognition of the loss of civic and political rights in Eastern Europe (and vice versa).

These new developments in Christian understandings of human rights are paralleled by similar developments in Judaism, Islam, Hinduism, and Buddhism. But perhaps the Christian case can serve as a sufficient test case of my general hypothesis: namely, that the religions do bear resources worthy of the interest and the critical scrutiny of all persons interested in human rights. I repeat that my claim is not that *any* of the religions (or all of them together) resolve the issue of human rights for the pluralistic public realm. For example, on the third crucial question of human rights—how to make decisions when one finds a conflict of rights—an agreed-upon, concrete strategy faithful to both general principles and different historical situations is as debated in the religious communities as in the wider community.

I continue to believe, however, that the religions do bear public resources—in both their concrete symbols and their abstract principles—that merit the critical attention of all in the public realm. Thus must I disagree with Jacques Maritain. Unnerving as it may be, we *should* ask one another: Why? And as we continue to ask that troubling question, it may become apparent again that atheists for Reinhold Niebuhr was not such a peculiar phenomenon after all. For what we must need in the concrete struggle for human rights is a sense of genuine human solidarity and the dignity of every person. If the religions help us to achieve that sense, so be it. "Why" then becomes "Why not?"

ENDNOTES

[1]For representative work here, see Richard Bernstein, *The Restructuring of Social and Political Theory* (New York: Harcourt Brace Jovanovich, 1976; *Hannah Arendt: The Recovery of the Public World,* edited by Melvin A. Hill (New York: St. Martin's Press, 1979); William Sullivan, *Recovering Public Philosophy* (Berkeley: University of California, 1982).

[2]As examples, see the essays *Rationality and Relativism,* edited by Martin Hollis and Steven Luhes (Cambridge: MIT Press, 1982); *Rationality To-Day: La Rationalitè Aujourd 'Hui,* edited by Theodore F. Geraets (Ottawa: The University of Ottawa Press, 1979). In ethics and religion; see *The Roots of Ethics: Science, Religion and Values,* edited by Daniel Callahan and H. Tristram Engelhardt, Jr. (Hastings-on-Hudson, N.Y.: Institute of Society, Ethics and the Life Sciences, 1981).

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[3]Thomas Kuhn, *The Structure of Scientific Revolutions* (Chicago: University of Chicago Press, 1962 and 1970); *Criticism and the Growth of Knowledge,* edited by Imre Lakatos and Alan Musgrave (Cambridge, England: Cambridge University Press, 1970); Stephen Toulmin, *Human Understanding vol. 1, The Collective Use and Evolution of Concepts* (Princeton: Princeton University Press, 1972); Hilary Putnam, *Reason, Truth, and History* (Cambridge, England: Cambridge University Press, 1981).

[4]Paul Feyerabend, *Against Method* (London: Derson, 1978); Richard Rorty, *Philosophy and the Mirror of Nature* (Princeton: Princeton University Press, 1979); Christopher Norris, *Deconstruction: Theory and Practice* (London: Methuen, 1982).

[5]See Alasdair MacIntyre, *After Virtue* (Notre Dame: University of Notre Dame Press, 1981).

[6]David Tracy, *The Analogical Imagination: Christian Theology and The Culture of Pluralism* (New York: Crossroads Press, 1981), esp. pp. 99-193.

[7]See Hans Robert Jauss, *Toward an Aesthetic of Reception* (Minneapolis: University of Minnesota Press, 1982), pp. 3-76.

[8]On argument, see Stephen Toulmin, *The Uses of Argument* (New York: Cambridge University Press, 1958); on conversation, see Hans Georg Gadamer, *Truth and Method* (New York: Seabury, 1975); on same criteria for consensus in argument, see Jürgen Habermas, *Knowledge and Human Interests* (Boston: Beacon Press, 1971) and "Towards a Theory of Communicative Competence," *Inquiry* (1970).

[9]For interpretations on the major religions, along with good bibliographies on each, see *Human Rights in Religious Traditions,* edited by Arlene Swidler (New York: Pilgrim Press, 1982); on Christianity, see especially, *Understanding Human Rights,* edited by Alan D. Falconer (Dublin: Irish School of Economics, 1980).

[10]I have tried to defend this notion of the relationship of the classics of art and the religious classics (and their similar criteria of disclosure-transformation) at the length needed in *The Analogical Imagination*, pp. 99-193.

[11]On religious questions as "limit-questions," see Paul Ricoeur in *Semeia 4* (Missoula, Montana: Scholars Press, 1975), pp. 107-45; and David Tracy, *Blessed Rage for Order: The New Pluralism in Theology* (New York: Crossroads Press, 1979), pp. 91-120.

[12]It is, of course, crucial to see how theocentric Christian positions on human rights are. I concur with those theologians who insist that the ultimate foundation of the Christian position here is the explicitly theological category of the Sovereignty of God. Yet that inner-theological debate (which is also, on wider public grounds, a debate on the nature and status of metaphysics) is not necessary to resolve for the purposes of the present discussion. If that discussion continued past the parameters of the present article, it would be necessary (and highly difficult!) to resolve on both theological and metaphysical grounds.

[13]It should also be added that this struggle is a continuing one: for example, the struggle within the various churches to affirm human rights there—especially women's rights. It remains true, also, that it is often difficult for many to take the positions of the churches on human rights in society with full seriousness when those same rights are abused *within* the churches. The struggle, in short, is one that must apply fully within church structures as well.

[14]For good studies, see Jean-Yves Calvez and Jacques Perrin, *The Church and Social Justice: The Social Teaching of the Popes from Leo XIII to Pius XII* (Chicago:

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Henry Regnery, 1961); *The Gospel of Peace and Justice: Catholic Social Teaching since Pope John,* edited by Joseph Gremillon (New York: Orbis, 1976); and the best historical and construction study I have seen on the subject from a Christian perspective, David Hollenbach, *Claims in Conflict: Retrieving and Renewing the Catholic Human Rights Tradition* (New York: Paulist Press, 1979).

[15]For an example of that struggle, see *Human Rights in the Americas: The Struggle for Consensus,* edited by Alfred Hennelly and John Langan (Washington, D.C.: Georgetown University Press, 1982).

[16]See the analysis of David Hollenbach in *Claims in Conflict,* "The Human Rights Debate," pp. 7-41.

[17]Quoted in Ibid., p. 15.

[18]For one example among many (including several publications of The World Council of Churches), see A. Cunningham, D. Miller, and J. Will, "Toward an Ecumenical Theology for Human Rights" (New York: Commission on Faith and Order, National Council of Churches, 1980).

[19]Representative texts here: Robert McAfee Brown, *Theology in a New Key: Responding to Liberation Themes* (Philadelphia: Westminster, 1980); *The Challenge of Liberation Theology,* edited by Brian Mahan and Dale Richesin (Maryknoll, N.Y.: Orbis, 1981); Johann Baptist Metz, *Faith in History and Society* (New York: Crossroads Press, 1980); Matthew Lamb, *Solidarity with Victims* (New York: Crossroads Press, 1982); Juan Luis Segundo, *The Liberation of Theology* (Maryknoll, N.Y.: Orbis, 1976); James Cone and Gayrand Welmore, *Black Theology: A Documentary History,* 1966-1979 (Maryknoll, N.Y.: Orbis, 1980); Elizabeth Schüssler Fiorenza, *In Memory of Her: A Feminist Theological Reconstruction of Christian Origins* (New York: Crossroads Press, 1983). The eschatological categories used in this article (nonidentity, interruption, utopia, suffering as contrast-experience) are familiar categories in this literature. In the case of the political theologians (e.g., Metz), the work of the revisionary Marxists of the Frankfurt School, especially Walter Benjamin and Ernst Bloch, are noteworthy: Bloch, for his retrieval of the priority of the future in utopian and eschatological symbols; Benjamin, for his notion of history as apocalyptic interruption and his retrieval of the memory of the suffering of the oppressed.

[20]Eugene Genovese, *Roll Jordan Roll: The World the Slaves Made* (New York: Random House, 1972).

[21]John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971), esp. pp. 118-95.

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Dieter Henrich and David S. Pacini

The Contexts of Autonomy: Some Presuppositions of the Comprehensibility of Human Rights

WHEN EVERYTHING HAS BEEN DONE to proclaim human rights; when everything has been said to show that human rights are norms with a claim to validity and universality; when every effort has been made to show that such claims can be rationally justified on the basis of universal principles alone; when every relevant feature of their potential for cultural imperialism has been taken into account; when, in fact, there is strong evidence to show that human rights today are set in a wholly different global context than that of their original modern constitutional proclamation and theoretical justification—even after all this, it is difficult to see how human rights claims could be championed and made effective if, even tacitly, they are regarded as fictions, however beneficial and cornucopian, and not as truth.[1] And yet this suspicion is as widespread as is the sense of impotence in which human rights discourse is almost ineluctably mired.

What can philosophy do to check the further diminution of human rights discourse? Its greatest contribution may be in helping to

This essay is an English version of the German text, *Umkreis der Autonomie (Kantian Investigations,* 2 vols., forthcoming), based upon the joint research of Professors Henrich and Pacini. Professor Henrich's German text is more extensive, including greater elaboration on the philosophical ideas outlined here and more attention to the requirements of a specifically philosophical readership. Professor Pacini translated and recast the German text for its appearance in this issue of *Daedalus.*

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reinstitute belief in the truth of human rights claims, not through a revival of past historical contexts alone, as some philosophers have sought to do, but through an analysis of human rights themes, claims, and hopes in their historical context of interrelated convictions and prospects, along with an interpretation of subsequent changes in these contexts and the exploration of possible ways to justify norms within them.

Theoretical attempts to interpret human rights have tended notoriously to disregard the contexts in which human rights claims are anchored, and therefore to overlook entirely the far-reaching shifts from modern to contemporary thought contexts. This oversight may be due, in part, to the attempts by exponents of contemporary practical philosophy—whether variants of general utility or general will theories, of empiricist ethics or rationalist moral theories—to remain methodologically consistent within the broad frame of classical practical philosophy.[2] Rigid adherence to a particular type of theory and its distinctive mode of argument, however, assumes that the truth of human rights claims can be made dependent upon the success of such a theory. But no theory is airtight; all can become subject to fundamental doubt. And if they do, so too does the validity of any human rights claim they might make.[3] Even more, contemporary practical philosophy seems unable to articulate the inner perspective of the individual agent who has doubts about, and reservations toward, the normative conduct invoked by human rights claims.

To preserve the tradition of human rights in a transformed world, without succumbing either to superficial, nostalgic sentiment or to nagging suspicions that it is little more than a moral fiction, requires a theory that is sufficiently broad to incorporate what is often neglected and sufficiently bold to withstand the temptation for tidiness and harmony at any price. Such a prospect may enable us to *rethink* human rights, rather than to indulge in violently exaggerated reactions to the cant and vanity of earlier generations.

PRELIMINARY QUESTIONS REGARDING THE GROUNDING OF RIGHTS

At the time of their first constitutional proclamation and justification, human rights were legal entitlements that, unlike other entitlements, developed pathos and triggered intense motivations. Both in

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the United States and in France, the majority of those who acknowledged and justified human rights, and who acted in accordance with them, were of the opinion that this pathos and motivation were supported with good reasons. Human rights, they believed, were based on valid, universal norms. It was inconceivable to them to explain human rights in terms of hidden interests or as a fiction for the integration of a newly emerging social system. If we are to reestablish the truth of human rights claims in a contemporary formulation, we must once again take seriously what is today widely discarded: belief in valid, universal norms.

Before taking up this formulation, it might be useful to introduce some easily ignored philosophical distinctions. To begin, norms are ideas about the proper ordering of conduct in the world. As such, they incorporate a notion of the world in which they would be realized. The use of norms cannot occur if they are not related to the factual circumstances of the world in which they are brought into play. The ideal of bravery, for example, makes as little sense in a world without danger, as does that of conservation in a world that husbands its resources.

Second, norms embody a specific notion of the agent who is governed by them. For the ideal of bravery, the notion is of an agent who can effectively confront life-threatening circumstances; for the ideal of prudence, one who can effectively govern the human tendency toward prodigality. Thus, when we adopt a norm, we do so because it has bearing for us; in knowing this, we simultaneously recognize ourselves as agents of a particular kind.

The correlation of world- and self-images in norms was first noted by Kant and those who followed him.[4] For them, the variability of our images of ourselves and of the world we inhabit has far-reaching consequences for philosophical analysis: it means that the way an agent sees itself—its self-image—is no more readily deduced from a particular social world than it is from a purely abstract norm. To be sure, some of our self-images as agents do derive from our position within a particular social system. Moreover, social systems inform our sense of personal identity as well. Nevertheless, we are not wholly determined by our environment. The course of life can lead through numerous, differing self-images that may conflict. Because we are confronted with differences in outlook that both relate to and limit each other, we find, when we work through these conflicts, that

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of necessity we appeal to a more general and encompassing world understanding than that afforded by any specific natural or social world view. It is this more general world-image, however variable, that is constitutive of the form of an agent's self-image.

How we construe both the order of the world and the place of agents in that world contributes as much as, if not more than, anything else to the self-images we have of ourselves as agents and to the interpretation of the arena within which we understand and accept norms for our conduct. To speak of rights as norms is to speak of a world in which an agent's conduct is to be regulated: some acts are required; others precluded; still others are guaranteed. But whether guaranteeing a sphere of freedom in which the agent can act, or assuring the minimal conditions under which the agent might live, the notion of rights is inseparable from the conditions of the factual world.[5] This is not to suggest, however, that the principle of rights applied to real world conditions is derived wholly from that world; in some sense, any normative principle differs from the factual world insofar as it is an ideal for, rather than a reflection of, the ordering of the world.

Clearly, not all correlations of world- and self-images are conducive to the adoption of rights as norms. Three correlations proceeding from different images of the world may help to illustrate this point.

One view is of the world as the *intentional object* of our actions, a world in which our actions are part of a natural life cycle or serve to maintain the natural or cosmic order. In such a world view, we would see ourselves as agents whose actions conform to and reflect our knowledge about the fundamental processes of the natural life system. And in such a world, perseverance and acceptance of fate are the norms that would bear most strongly on our lives, for these serve to sustain the life cycle. These norms also underscore the embeddedness of the agent in the world structure. But because world-image, self-image, and norm do not allow independent reflection on the conditions that enable possible courses of conduct, a prospect that is fundamental to the establishment of entitlements is absent. And without this prospect, human rights can have no place in this world.

Another view that secures at least a measure of independence for the agent is of the world as an order already constituted, but as *only*

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a framework for our actions. For us to comprehend the order, we must conceive of some authority who is both the author (god) of the order and independent guardian of the world. The transcendence of this god opens the prospect for the agent to conceive of itself as independent. It does so because the agent is a member of two spheres—the present one and another, redemptive one. In the present sphere, there is an obligatory ordering that determines the agent's place and course: the agent knows both its role in life and what is required of it. The redemptive sphere places obligations on the agent as well: the god calls upon the agent to practice brotherly love. The goal and fulfillment of life is thus grounded in the redemptive sphere. This requirement to practice brotherly love introduces another dimension to the agent's self-interpretation: the agent now conceives of itself as the origin of activity that is appropriate to the redemptive sphere, and that is the vehicle through which the agent is ultimately brought "before god." By virtue of its response to the call for brotherly love, then, the agent can move beyond the present world order, thereby incorporating a measure of transcendence into its self-image. Yet the universal call to brotherly love, while transcending the boundaries of regionalism, of race, and of culture, nevertheless belongs to the redemptive sphere and not to the present one. Although this call may cause us to weigh our conduct in the present sphere differently, it does not restructure our conduct. The call to brotherly love is not a universal ethic for action in this world. Despite the individual's independence from this world sphere through its transcendence to the redemptive one, no conception of human rights can emerge in this correlation: this image of the world fails to promote the sense of self-determination necessary to direct independent reflection back toward the world order of the present sphere.[6]

But there is another way of conceiving the world, one that enables us to fill in this lacuna. We might imagine the world simply as a field that can be shaped according to norms that only we as agents can bring into play—a world that is not itself a source of norms, still less a world without an authority above it as the primary source of norms. The agent in this world has the self-image of being alone the source of both actions and norms. These are imposed upon the world through knowledge of laws and technical transformations, and established there in social institutions and in the constitutional state. The norms that bear upon this agent's self-image are entirely self-derived and self-referring:

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they have to do with individual self-preservation, not in the sense of survival in a hostile world, but in the sense of instituting a world shaped by reason alone. This world-view/self-image, together with its norms, is hospitable to the notion of human rights. For a principle that has its origin in the agent and that can serve as the foundation for the construction of a political constitution, while simultaneously orienting all conduct, even beyond the reach of any particular society, is integral to the universal scope of rights entitlements.

The three outlooks not only illustrate the structured interdependence of world-view, self-image, and norm, but also bring into view the role of motivation. What might conceivably motivate us is unintelligible apart from the self-images we hold. As self- and world-images of an agent vary, so also do the forces that encourage the adoption of certain norms. Those who experience the world as the nexus of fate have motivations quite different from those who experience the world order as providential, and more different still from those who experience it as opening up spheres of emancipating action. Within the entire range of motives commensurate with the self-image we hold, it must be possible for norms to be the decisive motivating factor in our conduct. If this were not so, norms would either be regarded as objects of intellectual inquiry and historical reflection—useful devices for the interpretation of conduct, but not for its motivation—or as necessary fictions for societal regulation. To hold that norms do motivate conduct does not require the belief that all norms function in the same way. Norms can dominate an entire life, just as they can be held in check from all but special circumstances; they can be placed above question, or they can be subject to critical scrutiny. Nevertheless, norms that are consonant with the agent's self-image and world-image are capable of constellating motives and of producing sufficient pathos to incite action.

The interrelationships of world views, self-images, and the acceptance of norms that motivate action are indeed complex and difficult to articulate conceptually, yet they are nonetheless integral to conceiving the vision of life that those who used the language of rights as a natural expression for it must have had. We may not understand their experiences, but these experiences cannot be excised from an interpretation of the original proclamation of human rights. For to do this would deny us the possibility of discerning the inner perspective of those who first embraced rights, and would obscure the fact

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that the idea of rights carries a world concept with it. To omit is inevitably to restrict. The narrow view that considers human rights only as norms tacitly presupposes that a broader range of considerations, such as the conditions under which human rights norms will be adopted or the conditions under which they will become truly persuasive, at best belongs to the past if they were ever viable at all. For this reason, those who hold the narrow view cannot understand that the resistance of other cultures to the propagation of human rights programs is in reality resistance to a world view or to norms that may be adopted as political or rhetorical expedients, but not as decisive motivations for conduct.

THE MODERN GROUNDING OF RIGHTS

At the root of eighteenth century philosophical arguments for human rights stood an idea of the world and its relation to human society as a single intelligible structure. This idea, the philosophical arguments, and the first constitutional proclamation of rights were all received by, and resonated with, the general consciousness of the time; at least some of these arguments were based on world conceptions that could evoke pathos in those who embraced them.

These arguments followed two theoretical lines, one dominated by Locke and Paine, the other, by Rousseau and Kant. Both lines of thought held two ideas in common: they ruled out the natural sphere of human activity, as such, as a source of norms, and they developed a concept of reason according to which the form of reason itself is both the only and the sufficient source of rules and obligation for action. From these lines of thought, the modern idea of an "autonomy" of reason and of the rational human essence emerged. Not only actions, but also the norms for action, were thought to issue from this self-relation, self-organization, and self-development of reason. Moreover, the basis for the legitimacy of norms was claimed to reside in reason. It followed from this that the natural world is subject to the imposition of an order that has been rationally derived through technological transformations and constitutional social organization. No longer bound to the limited task of protecting life from natural adversities, human conduct could now transform the basic drive of self-preservation into a rational form of conscious life

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that followed norms derived solely from reason's understanding of itself.[7]

Autonomy thus conceived became the backdrop for a type of theory that is explicitly based upon the conditions and needs of life (Locke). From these basic needs, legal entitlements were derived that not even the power of the state could violate, even though the idea of the state flowed from the same source. Difficulties arise for this type of theory, however, as soon as "reason" is introduced to explain the universality, reciprocity, and obligatory nature of rights, since reason is not inherent in the set of needs that gave rise to theory.

Autonomy is also an element in the type of theory that departs from the self-relation of reason and proceeds to define "man" on this basis alone (Rousseau).[8] Here, rational self-preservation explains consciousness and the dynamically far-reaching self-shaping of human life. This dynamic renders the essence of man to be nothing other than freedom, which is emancipation from both external influence and from previous impositions of norms. Accordingly, it is neither the function of rights nor the duty of government to guarantee the opportunity for the self-shaping of life, but rather to promote the integrity of self-determination in human creative action.

The critical power generated by the interaction of these two types of theory was altogether extraordinary. It precipitated the collapse of social orders in which norms were attached to world views that no longer seemed tenable, offering instead a new understanding of both norms and freedom. A new self-consciousness and a new self-confidence in the race appeared. Insofar as the norms of the new self-consciousness were self-legitimating, its distinctive character emerged more from its establishment of new orders than in rebellion against the old. In this framework arose belief in the original rights of man; here, they found support and background.

The capacity to conceive of multiple ways of categorizing reality, like the ability to understand what it is to be an outcast, a revolutionary, or to be poor, permeated the temper of the time; it centered in Rousseau. It was clear to him that the framework within which the belief in the rights of man arose needed further elaboration. From the perspective of the agent who has become conscious of freedom, it is unsatisfactory to locate this freedom in the simple relation between individual self-determination and the meaningless material world. So Rousseau added, as the correlate of the conscious life that establishes

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its norms from within, a richer picture of the world, one that included the basic tenet of a deistic god who supports the goals of free self-actualization. And those who followed Rousseau broadened this view further by maintaining that the life of human freedom is reflected in the common ordering manifest in the beauties of nature.[9]

But even this image, which Rousseau dedicated to the individual who lives under the self-image of autonomy, was soon thought to be inadequate. Its basic flaw seemed to lie in its assumption that isolated individual freedom is the Archimedean point of all world views.[10] So to the Rousseau-inspired faith in freedom, Kant and his successors added an important qualification: freedom finds support and opens up possibilities for life only in a world-image in which it genuinely becomes a part; the world, in turn, must be thought to include both the potential for generating self-determined freedom and the site for the appearance of freedom.

From reflections of this order emerged attempts to transform the dominant deterministic world-image of the time (Spinoza's)—which shared many components with the theory of autonomy—in a way that opened a place for the rational self-determination of the finite being.[11] Thus emerged the ideal of a "Spinozism of Freedom," which remained influential well into the nineteenth century. Many now consider Hegel's work, which combined methodological monism and autonomous freedom, to be proof of their potential for opening a theoretical path and for penetrating the experiences of his time. Fichte, who alone attempted to make autonomous action intelligible without presupposing the notion of the person as a fixed starting point, also achieved this result. This approach made it possible to introduce questions that cannot be anchored solely in the concept of the person—such as those about the origins and development of the structure of consciousness—without, in the course of answering these questions, turning the belief in freedom into a fiction.

Although many today find such theories obscure, no one can deny the value of a theory that was committed to, and brought together—however irreconcilable they appear—the premises an epoch refused to abandon. Of greater value still is the capacity of this type of theory to offer an interpretation of the autonomous agent's world views that does not derive its power of articulation from another world view that is based quite differently. But perhaps the greatest value of this type of theory is that it opens the way for connecting world views of freedom

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and world views of other cultures within a single theoretical context. A conspicuous example of this potential may be found in the way this type of theory interprets history. History, it says, consists not only in progress toward liberation, but also in the self-development of the human spirit; and only when the human spirit is cultivated into the consciousness of freedom and self-certitude does the basic constitution of spirit, operative at each stage of its development, become manifest.

This type of theory has further potential; its analysis of human freedom could perhaps be revived. But whatever might result from such a revival, it is certain that this type of theory, just like that of Locke or Rousseau, cannot be restored by simply calling up the past. A shift in the consciousness of the age and its perception of problems makes this impossible. This shift escaped the theoretical gaze of early nineteenth century thinkers, yet it wholly changed the prospects for communicating and justifying human rights.

THE SHIFTS IN CONTEXTS

It often appears as if, in our time, the universal lip service paid human rights stands in inverse relation to subtle social and institutional communication of egoistical self-images. Our approval of human rights reflects an Enlightenment world view of self-interest that contributed to the institution of legal recourse for the adjudication of rights disputes. Our egoistical self-images, which also reflect Enlightenment ideals, nevertheless incorporate a propensity for nihilistic practices that can erode both norms and institutions. We may justly wonder why these conflicting forces seem to correspond in our contemporary perspective.

The more deeply we look into the world view within which the theory of autonomy operated and within which the idea of human rights had its modern appearance, the clearer it becomes that this outlook emerged from what may be called a second level of critique or a *second level of reflectedness*. This orientation of thinking goes beyond a simple account of the possibility of error in general, characteristic of a first level of critique, to incorporate the awareness that misconceptions can inform our ways of knowing and that these may well originate in the way we reason. Reflection upon the sources of knowledge is therefore recognized as indispensable to the possibility of reliable knowledge.

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The emergence of critical thought that turns upon itself was fundamental to the discovery that norms can have their source in nothing other than the self-awareness of reason. Whether valid or invalid, discourses that proceed from the inward turn of reason become the basis for the insight that reason is the source of norms. Paradoxically, not only calm, rational insight, but also a peculiar *pathos* of reason, manifested as intense feelings of self-empowerment, issue from critical reflection. Even though rational discourses can in fact be the basis of error, the critical capacity of reason can be the foundation of a life free from outside control and confusion.

But the coalescing of these forces in reflective thought can precipitate a *third level of reflectedness*. Whereas the second level of reflectedness seeks sources of deception that insinuate themselves systematically into the structure of our cognitive capacities, the third level suspects that all rational suppositions are themselves nothing but irresistible deceptions. Whereas the second level of reflectedness generates the pathos of rational self-determination, the third level, in the course of confirming its suspicions, arrests this pathos.

The third level of reflectedness gained predominance in the middle of the nineteenth century.[12] It gave rise to theories which claimed that life directed according to reason and self-determination is an illusion, and that it is the basic struggle for survival and the need for intense feeling, not autonomy nor the pathos of freedom, that support this illusion. Of course, such theories served to reinforce the third level of reflectedness. Yet, however much they differed, they were nonetheless as one in unmasking and rejecting the basic convictions that had given rise to the notion of human rights.

A variant of this third level of reflectedness, developed by the new science of sociology, was used in two ways to explain the historical proclamation of human rights as a development of social forms: "human rights" was interpreted as the battle cry of the propertied bourgeoisie,[13] but also as a means for the dismantling of stratified society and for promoting a merely functionally differentiated form of society.[14] In both interpretations, human rights are construed as a weapon to be used in a struggle, but one whose inexorable resolution human rights—paradoxically—cannot support. Still, merely to construe human rights as a weapon offers new means for understanding the intense fervor its proclamation evoked. By way of contrast, the ratio-

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nality of the third level of reflectedness, which exposes illusions, wholly checks pathos.

Yet the sobriety of the diagnostic gaze is in some ways self-refuting. In a world stripped of its deceptions, everything real is meaningless. We view the world as an illusion, all world-images as repudiated, and world events as unalterable. Nothing remains to motivate us except the urge to seek refuge in an inner sanctuary, where warnings against the thoughtless suspension of norms are mere rhetoric and not, as had once been, a belief in the ruling power of reason. Thus, extolling the rejection of reason's exuberance can come to entail both emotional hostility and a latent desire to restore what has been lost to illusion: the primary need for self-esteem.

To restore self-esteem, the claim of dispelling the illusion of rationality was coupled with the claim that humans could fulfill themselves through the imposition of spontaneous, self-created form on the chaos found in the worlds of nature and thought. By the end of the nineteenth century, the appropriate form was thought to be the *polis*.[15] Characterized by instinctive and spontaneous cooperation, the *polis* is our own construction, an invention. Rationality may well confuse such constructions with eternal laws or divine decrees, but this is fatal delusion. Behind the veil of rationality, it was now to be argued, lies the prospect that all action can be oriented and organized in the service of an order of nature or of an actual dynamic of societal development. This apocalyptic prospect foretells the great human uprising of the children of light against the children of darkness, of the fighters for freedom against all the stifling oppression of remorselessly tidy rational organization. Herzen, Proudhon, Bakunin, Kautsky, and Sorel spoke in similarly revolutionary terms.[16] Their doctrines of political salvation tended either to accept covertly or to flaunt a deliberate nihilism as their basic position: the crippling views of the meaninglessness of everything real are turned into violent forms of radical action, untrammeled by illusions. Such radical actions first appeared toward the end of the nineteenth century under the guise of *Realpolitik,* which divorced politics from the realm of ideals and morals. In the first part of the twentieth century, these actions had, as a further consequence, the historically unparalleled torment, degradation, and annihilation of human beings. And these consequences suggest that deliberate nihilism must be interpreted as a revolt against the belief in reason as such and its derivative doctrine of hu-

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man rights—a revolt staged by those who not only hold this belief to be empty, but who also fancy themselves to be serving the cause of truth.

The *horror* of the revolt and its policies of annihilation had several concrete effects: it gave strong new impetus to early twentieth century attempts to revive the natural law tradition as a way to support rights; it had a far-reaching impact on UN efforts, buoyed by the revival of this tradition, to forge a new Declaration of Human Rights; and it led to the establishment within the European community of the first international institution for claiming human rights in court.[17] Furthermore, it played a part in the recent return of philosophical ethics to the classical theoretical tradition of grounding norms rationally. Yet new variants of deliberate nihilism continue to manifest themselves in heretofore unthought ways; in numerous countries, the mass graves of many of its victims give silent testimony to this.

No doubt, the most noble motives and the most pressing causes are integral to the defense of civilization against the nihilistic practices that weaken its foundations. But motives and causes are not enough. In order to oppose nihilism effectively and perspicuously, motives and causes must be conjoined with a valid theory that can give rise to justified convictions. Because nihilism *in action* is a direct attack upon the basic convictions that underlie human rights, it is absolutely clear that for a valid theory to give rise to justified convictions, it cannot remain restricted to an analysis of norms alone. Nihilistic practices, after all, know themselves to be supported by a world view, and they perceive the norms of human rights doctrines to be empty when they are not anchored in the world; even where nihilism is overtly rejected, many of its elements can make their way into unarticulated opinions concerning the insignificance of human life and the baselessness of universal norms. The world view of nihilistic practices offers a different self-image, one derived from the attempt to intensify the energies of old by liberating them from the control and inhibition of illusion. But these, of course, are imaginary self-images, because they are derived from motives that do not develop naturally from a world image, but erupt with the belief in the *dissolution* of world images. Imaginary though they may be, nihilistic self-images are nevertheless potent because they locate the acceptance of norms, no matter how destructive, in the nexus of self-world

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correlations. They therefore approximate more nearly the conditions of reality than do the views that conceive rationally defined ethics so narrowly that they overlook entirely the contexts upon which consciousness of norms depends.

Anyone who wants to conduct a critical examination of practical nihilism, exposing *its* illusory structure, must have at hand elements of a theory of corresponding depth. Taken by itself, criticism of this order would not yet consist in the justification of human rights or in the grounding of our conviction of their existence in action, but would merely restore the cool distance of the third level of reflection. If not combined with another interpretation of the world, such an examination would leave us utterly confused, with our impulse to act paralyzed, and situated in a context from which nihilistic practices could easily reemerge.

Now other forms of criticism have appeared. Both the philosophies of "concrete existence" and of "scientific socialism" see the third level of reflectedness to be continuous with its predecessors, which first made possible modern liberal individualist and general will theories about human rights.[18] Both philosophies aim to strike down second level rights theories and third level nihilism simultaneously by showing that second level theories of autonomy led straightway into aggressive nihilism.

To begin, the two philosophies see nihilism operative not only in political doctrines of apocalyptic salvation, but also in the technological powers of our time. Industrial and state bureaucracies assume that the mind is itself a machine that orders and masters material reality. But if the mind is a machine, recollective and imaginative capacities atrophy. Thus, the triumph of technology is the liquidation of the individual and its values.

At a more fundamental level, these theories maintain that the true origin of our current malaise is the assumption of third level reflectedness that man can set himself up as the measure of all order and as the source of binding world meaning. They go on to say that this assumption of egocentrism was also basic to the second level of reflectedness. Thus they claim that the enthusiasm evoked by the first proclamation of human rights actually contained in embryonic form the greatest threat to all humanity.

To rescue humanity from this threat, these philosophies maintain that we must experience our place in the totality of what is in a

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fundamentally different way. To do this, we must be released from all the conditions that have informed our thinking for the past two centuries. Apart from this, all we can contribute to the possible future of the race is the recognition of our own historical situation and our abstention from all egocentric claims.

Although these philosophies appeared to be in decline, they have begun to reemerge as a philosophical force.[19] Once again we are counseled to withdraw our claim to human rights, and admonished to eschew as well self-critical examination and the technical apparatus that is thought to provide a better life. What this admonishment ignores, however, is their indispensability to our lives. Even our new sensitivity to our own physical world and the universe is made possible and sustained by our third-order-of-reflectedness thinking and its offspring, technology. The call to cast aside the imprudent use of technology, as well as the entire third level of reflectedness, must—to be consistent—include the invocation of a self-image that has mythic origins. But once we recognize that the mythical world-images which correspond with mythical self-images leave little room for the view that the world is tender or friendly, and less room still for concern about the endangered living place of the race,[20] we should hesitate. Such mythical world-images are untenable in our time. To be honest with ourselves, we must reject not only them, but also those calls to deconstruct society that are based, however tacitly, upon them.

If the third level of reflectedness is historically continuous with the rationality that led to the proclamation of human rights, we have only one alternative: we must either decide to stabilize ourselves within our predicament, holding out as our brightest prospect only cool detachment from our own existence, devoid of interpretation; or else find in the world situation grounds for self-images and an interpretation of our situation that again opens our conscious life to the acceptance of universal norms.

The interpretation of our contemporary world demands first of all that we discard the notion that man—the finite subject—is the axis around which the world turns and evolves. What Rousseau intimated, Kant and his successors saw more clearly: we can understand ourselves only as part of a world, a world that includes within it the possibility of freedom. To be sure, there are those who will claim that adopting such world-images is no more than a way of appropriating the benefits of hindsight in order to stabilize social conduct. For these

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claimants, images of autonomy are consciously false; nevertheless, they say, we employ such images, despite their discontinuity with the world we experience, "as-if" they were true, owing to their usefulness for ordering conduct in the ordinary world. But adopting images in this way, while presumably serving the interests of society, actually serves the needs of the individual. Because such adoption has, primarily, cognitive use-value, it covertly enthrones the finite subject and its needs.

The charge of egocentrism, even tempered by the form of an "as-if" philosophy, cannot, however, extend to the most powerful images of freedom. One of these is the unity in freedom of the autonomous agent and the world, even though both agent and world derive from opposing forces. Another is of the autonomous agent who confronts the sensuous embodiment of freedom in beautiful appearances, because the form of the beautiful is free-flowing. Both images underscore the experienced continuity between self and world in freedom. But these images and others like them in the history of autonomy are further bound together through the conviction that norms and knowledge of their validity are grounded in a sphere other than the ego. They proceed from an inner form of self-conscious life that extends beyond our sense of self-assurance, to become integrated into a total world-image.

We can only incorporate this conviction—that the ground of freedom differs from the self—into those comprehensive images that transcend seriously the agent's self-assertion. This means, among other things, that we must conceive of the finite subject in new ways. We can, for example, entertain the notion of a subject from whom a normative principle may be derived, even though the subject does not yet have a self-image or self-generated motivation. We need only note that such a subject need not be conceived of as an entity that explains or generates itself. Something may exhibit the form of a closed and complete system, yet be founded upon grounds that are not accessible within the system itself. To think of ourselves in this way is to recognize that because we are not wholly self-contained, we could not possibly generate the pathos of freedom. We can still legitimately orient conduct with respect to what we do know about the structure of the finite subject, but we must remember that the pathos of freedom, which issues through us, has its origin in another source.

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If we organized our conduct according to such a self-image—that we are capable of discerning the structure of our conscious lives without thereby apprehending its ground—we could still see ourselves as the original source of rights in a sense that is indispensable for a precise concept of human rights. We could, that is, base the legitimacy of human rights claims—claims to a life attaining insight and practical understanding and to the minimum means without which such life could not be supported—solely upon the inner form of our conscious life. Moreover, on this basis, we could conceive of ourselves as having sufficient power to assert these claims for ourselves and others. In this strict sense, we would remain the *origin* of human rights entitlements.

This does not mean, however, that our entire self-consciousness depends upon these claims: it would be otiose to hold that we are ourselves only to the extent that we actually assert these claims. What protects these claims from such empty pride is a larger context, one in which the possibility of infringements is real; apart from this, "human rights" would be not only instruments for the self-enhancement of our lives, instruments that help us to ignore or overcome our experience of finitude and dependence, but also ploys for transforming the legitimacy of human rights into arrogance. Unrestrained pride, then, precipitates forms of arrogance that undermine human rights still further.

At a time when the earth is overpopulated, when we seem to be taught our own nothingness, and when belief in human rights is not steadfastly supported—at a time, in short, that is dangerous precisely because we need to believe in human rights and do not—we must, to thwart those forces that threaten to destroy us, adopt a meaning of personhood for our world that offers us a self-image free from illusion. Such a concept would have to incorporate the inseparable connections between two apparently contradictory insights: that we as persons are the origin of rights claims, and that we are—just as originally—the only place where the world makes possible a transitory consciousness in and through ourselves. To think of ourselves in this way underscores our responsibilities to think clearly and to serve the interests of freedom. This concept affirms the free process of our self-consciousness and at the same time provides a vantage point where we may be emancipated from the vanity of our unquestioning self-centrism.

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Without the legitimacy of this orientation, the tradition of human rights must be deemed ungrounded and obsolete. For the concept of right in the proclamation of the original "rights of man" depends upon the idea that every human being is a source of justifiable universal principles that bring human conduct under guidance. Even if the power of this idea to convince were to dissipate, the virtues of sympathy and compassion, the contempt for exploitation and tyranny, and the knowledge of the destructive consequences of nihilistic practices would remain. But they would come from a source other than a form of life that claims the right and dignity of humans as its starting point.

JUSTIFICATION IN THE NEW CONTEXT

In a comprehensive justification of human rights, two powerful perspectives in contemporary thought must be taken into account: the perspective of societies whose histories include a tradition of human rights and that of societies whose cultures and histories do not. In the latter, for universal norms to be intelligible enough for them to be freely adopted, there must be a new justification. Richly articulated world-images and self-images cannot simply be imposed on cultures that are implicitly thought to be inferior or whose appropriation of norms and technologies incompatible with their very foundations threatens them with collapse. At the same time, we must preserve the insights derived from the third level of reflection, introducing them into a conceptual framework in which the idea of human autonomy is formulated in a new and potentially convincing way.

We have spoken thus far of the way in which the pathos of the Enlightenment converged with the nihilism of action; for our own time, we need a self-description and world-image that converge in a different way. To this end, two trains of thought may be adduced. From the first, we may derive formal grounds for a changed self-image of our conscious life; from the second, the foundation for a changed world-image. Here, we can only sketch their points of departures, leaving open the manner in which they are to be conjoined in a single theory.

The first line of thought emerged from two of the most important philosophical thinkers of our time, Heidegger and Wittgenstein.

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They agreed upon one thoroughly novel idea: that which cannot be articulated, the "dark" or the "withheld," is not only the limit of what can be known, but also a formation condition of the structures peculiar to the knowable itself. Applied to our conscious life, this insight prohibits many of the naturalistic reductions of consciousness that informed the rise of third-level reflection. Such application does not oblige us to ignore or repress our knowledge of the multifaceted limitation and of the dependence of conscious life. It shows that autonomy as an orientation for conduct can still be effective and legitimate in the context of these dependencies. It deprives nihilistic practices of their bases of articulation, since the unknowable cannot be shown to be illusory. And it can see emerging in the humanity of conscious life, which is incapable of pathos in its self-description, a ground for meaning that has a bearing not only for this life, but also for all that is real.

The second line of thought derives from the revision of an outlook on the world associated with early modernity. At that time, a cosmology and analogously constructed theory of history emerged in which the fulfillment of the race was construed as the ultimate end of world development. But this is not the only way of viewing the world that is compatible with the thought of autonomy. Indeed, what we have since learned about the world no longer allows this view. To begin, we have a good reason for holding that our conscious life is isolated in the cosmos; moreover, we foresee a future in which the earth is to become uninhabitable; above all else, we are confronted with a threat we alone have created: nuclear annihilation. A conception of our world and its ultimate end must therefore be constructed *inversely* to the world-image and teleology of early modernity. First, this world view would have to accord priority in its ontology to the accidental over the necessary. Then we could say that the peripheral position of conscious life in the cosmos corresponds to its privileged status. Second, this world-image would have to accord priority to the transitory over the definite. Then we could say that preservation also has meaning where lasting stability cannot be achieved. Third, this world view would then permit us to say of the entire world process that it arrives at what was earlier conceived of as its "end" when, despite the threat of annihilation, it opens up a limited space for a self-determined life.[21]

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Such ideas would also, if they are adopted seriously into self-descriptions, cut off the transformation of the third level of reflectedness in the nihilistic practices; shorn of "illusion," they are nonetheless meaning*ful*. And they are so, without relying on convictions of bygone epochs, which the good, but helpless, will is inclined to call on whenever there is no apparent way for humanity to be at home in the present.

The kind of understanding that makes use of thoughts of this order is not suitable for aligning the discourse about human rights with the pathos that surrounded the constitutional founding of the modern state. But it will be able to speak about human rights without that reservation and duplicity that undermine the very meaning of this idea.

In societies that were wedded to the tradition of human rights from the beginning, such reservations, which have their origin in the absence of convincing justifications, can be imperceptible and unrecognized by the majority. For traditions are binding, despite doubts; at least they keep doubt in check. Moreover, human rights are anchored in the constitutions of these countries, and the reference to them becomes a means for expressing the unity of their society, their differences notwithstanding. To be sure, such unity does not impede the growth of conduct that is the result of nihilistic practices.

But when the discourse of human rights is used to address other cultures and traditions, every weakness of its justification has direct consequences. In these cultures, there is a subtle sensitivity for the expressive power of discourse. Educated and uneducated alike know how to elicit from the invocation to accept universalistic norms the conditions of such acceptance. Without the development of acceptance conditions that are clear, credible, and commensurate with other traditions, there can be only verbal overwhelming, not a free incorporation of alien traditions into the life form of autonomy. This overwhelming forsakes the conviction that discourse about human rights can attract spontaneous agreement. Thus a second and more far-reaching consequence is that discourse about human rights becomes meaningless.

Spontaneous agreement can only issue from a discourse that is rooted in the self-image of an agent in its implicit knowledge of itself and of its world. Such discourse is not compatible with cultural relativism. Thus rights cannot be recommended with the assertion that

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they belong in the bundle of the achievements of Western civilization. Still less, therefore, can rights be advocated, because the traditions of the West require that they be. If one advocates rights generally, it must be because of their universal validity. But then it must be possible to clarify rights within the context of other cultures and traditions—which again implies that we acknowledge their incompatibility with some forms of life and self-image. Nevertheless, it would have to be shown that real possibilities for life are opened up within their context—and not just those from which the political institutions of the West arose.

To eliminate the risk of implicit colonization that often accompanies the importation of norms, therefore, only those societies whose traditions permit the adoption of human rights can be entrusted with their appropriation, development, and proliferation. Yet herein precisely resides the universalism upon which the essence of human rights depends. We know that cultural traditions vary widely; but that these traditions may eventually grow together in fundamental self-images of the race is the sustaining hope of human rights. If this were to happen, it would become possible to speak of humankind in a sense that differs from that of the natural species or that of a worldwide political and economic interdependence. Only then, and under new and unpredictable conditions, could the language of the "rights of man" recapture the resonance and fullness of meaning that possessed those who first championed rights in modernity.

ENDNOTES

[1]This view has achieved currency in much of contemporary practical philosophy; two of its more prominent spokespersons are Alasdair MacIntyre, *After Virtues* (Notre Dame, Indiana: University of Notre Dame Press, 1981), chapter 6, and Kai Nielson, "Scepticism and Human Rights," *The Monist* 52 (October 1968): 573ff.

[2]For an overview of the extensive literature on this subject, see *The Monist* 52 (October 1968); Alan S. Robinson, "Introduction," *The Philosophy of Human Rights: International Perspectives* (Westport, Connecticut: Greenwood Press, 1980), pp. 3-41; and *Ethics* 92 (October 1981).

[3]Nielson, "Scepticism and Human Rights."

[4]J.G. Fichte worked out, for the first time in his *Wissenschaftslehre* of 1794, a theory on the relation of modalities of will—like drive and striving—to different world images. A related theory is found in Hegel's *Phenomenology of Spirit.*

[5]For a discussion of these two types of rights, the kinds of theories that support them, and the controversies between them, see Bernard Williams, "The Idea of

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Equality," *Philosophy, Politics and Society,* 2d series, edited by Laslett and Runciman (Oxford, England: Oxford University Press, 1962); and Charles Beitz, "Human Rights and Social Justice," in *Human Rights and U.S. Foreign Policy,* edited by Brown and Maclean, (Lexington, Massachusetts: Lexington Books, 1979), pp. 45ff. The classic exposition of these differences is to be found in Isaiah Berlin, "Two Concepts of Liberty," *Four Essays on Liberty* (Oxford: Oxford University Press, 1969).

[6]It is not to be concluded from this world view—which is intended to be only of a Near Eastern universalistic monotheism—that all theological outlooks are unamenable to rights theories. On the contrary, the first rights theories were formulated in the contexts of religious world views. Although such views clearly do not proceed from the notion of autonomy, they are nonetheless tributaries to the welter of convictions that emerged in the modern assertion of rights. For further discussion of this point, see Richard Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, England: Cambridge University Press, 1979) and D.S. Pacini, "Human Rights: Civil Religion or Cultural Theology?" *The Cunning of Modern Religious Thought: Four Essays* (forthcoming).

[7]See Dieter Henrich, "Die Grundstruktur der modernen Philosophie," *Selbstverhaeltnisse* (Stuttgart: Reclam, 1982), pp. 83ff (English version in *Cultural Hermeneutics II* 1, 1974); and Pacini, *The Cunning of Modern Religious Thought.*

[8]See Leo Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1955), chapters 5 and 6.

[9]F. Schiller and F. Hoelderlin undertook these extensions in their philosophical writings.

[10]This leaves open the prospect that rational deliberation on the universality of norms is itself sufficient to structure the actions of persons who approach the ideal of complete rationality. Recently, this claim that norms can be justified without reference to context has played an important role in Jürgen Habermas's criticism of Max Weber in *Theorie des kommunikativen Handelns,* 2 vols. (Frankfurt: Suhrkamp Verlag, 1981), 2:430.

[11]This is the basis of the so-called *Aeltestens Systemprogram des deutschen Idealismus.*

[12]Schopenhauer, Nietzsche, and Freud were decisive figures in delineating the third level of reflectedness.

[13]C.B. MacPherson, *The Political Theory of Possessive Individualism* (Oxford: Oxford University Press, 1962), chapter 5. See also Emile Durkheim, *The Division of Labor in Society,* translated by G. Simpson (Glencoe, Illinois: Free Press, 1947); Herbert Spencer, *On Social Evolution,* edited by J.D.Y. Peel (Chicago: University of Chicago Press, 1972); Ernst Troeltsch, *The Social Teachings of the Christian Churches,* translated by O. Wyon (Chicago: University of Chicago Press, 1981); Max Weber, *The Theory of Social and Economic Organization,* translated by A.M. Henderson and T. Parsons (Glencoe, Illinois: Free Press, 1947).

[14]N. Luhmann, *Grundrechte als Institution* (Berlin: Duncker & Humboldt, 1965), and "Grundwerte als Zivilreligion," *Archivo di Filosofia* (1978): 51ff.

[15]Mikhail Bakunin and Georges Sorel are joint ancestors of twentieth century forms of facism and Marxism. See, for example, Bakunin, *Marxism, Freedom and the State,* translated and edited by K.J. Kenafick (London: Freedom Press, 1950), and Sorel, *Reflections on Violence,* translated by T.E. Hulme and J. Roth (Glencoe, Illinois: Free Press, 1950).

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[16]See, for example, Aleksandr Herzen, *Selected Philosophical Works,* translated by L. Navrozov (Moscow: Foreign Language Publishing House, 1956); Karl Kautsky, *The Dictatorship of the Proletariat,* translated by H.J. Stenning (Manchester and London: The National Labour Press, 1919); and Pierre Joseph Proudhon, *General Idea of the Revolution in the Nineteenth Century,* translated by J. Robinson (New York: Haskell House Publishers, 1969). For relevant works by Bakunin and Sorel, see note 15, above.

[17]The development in the recent history of human rights fosters the view that rights can be enforced without regard for special motivations or for their accompanying world images. Such an approach to rights emphasizes the need for political or governmental forms of organization to maintain social order. On this view, social order derives from mutual commitment to the positive statement of rights and from direct or implied coercion that guarantees mutual recognition of resolutions settling rights conflicts. However, a basic feature of rights claims lies precisely in their independence from, and priority to, political or governmental forms of organization. Instead, human rights claims explicitly appeal to a universality exceeding the special needs of governmental organization. Therefore, this development of human rights facilitates the resolution of human rights claims at the expense of recognizing fully the essential characteristics of those claims. Inevitably, then, the dividing line between language that legitimates the coercive power of government and language in which ethical ideals are developed is ignored. This is as true for the first American and French constitutional texts proclaiming human rights as it is for the texts of those theorists who attempted to justify them.

[18]Martin Heidegger, the principal proponent of the philosophy of "concrete existence" [*Being and Time,* translated by J. Macquarrie and E. Robinson (New York: Harper, 1962)], and Max Horkheimer, the founder of "scientific socialism" [*Critique of Instrumental Reason,* translated by M.J. O'Connell et al. (New York: Seabury Press, 1974)], first diagnosed and criticized our time in this context, as have their followers since then.

[19]Among those following Heidegger are Jacques Derrida, *Writing and Difference,* translated by A. Bass (Chicago: University of Chicago Press, 1978); Michel Foucault, *Language, Counter-Memory, Practice,* edited by D.F. Bouchard, translated by D.F. Bouchard and S. Simon (Ithaca, N.Y.: Cornell University Press, 1977), especially parts II and III; Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority,* translated by A. Lingis (Pittsburgh: Duquesne University Press, 1969). Those who have pursued Horkheimer's line of inquiry include Jürgen Habermas, *Legitimation Crisis,* translated by T. McCarthy (Boston: Beacon Press, 1975); Alfred Lorenzer, *Sprachzerstoerung und Rekonstruktion* (Frankfurt: Suhrkamp Verlag, 1970).

[20]Clifford Geertz, *The Interpretation of Cultures* (New York: Basic Books, 1973), chapters 5 and 10.

[21]See D. Henrich, *Fluchtlinien* (Frankfurt: Suhrkamp Verlag, 1982), pp. 38ff.

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Notes on Contributors

Maurice Cranston, born in 1920 in London, is professor of political science at the London School of Economics. Professor Cranston has written numerous books in his field, and on the subject of this issue of *Daedalus* specifically, is the author of *Human Rights Today* (1954) and *What Are Human Rights?* (1963). His most recent work is *Jean-Jacques: The Early Life and Work of Rousseau* (1983). Professor Cranston was formerly head of the department of political science at the European University Institute in Florence, and has taught at Harvard, Dartmouth, the University of California at San Diego, and the University of British Columbia.

Drew S. Days, III, born in 1941 in Atlanta, is associate professor of law at Yale. He is the author of "Concealing Our Meaning from Ourselves: The Forgotten History of Discrimination," (*Washington University Law Quarterly*, 1979) and co-editor of *Federal Civil Rights Litigation* (1977). Professor Days served as U.S. Assistant Attorney General for Civil Rights in the Carter Administration and from 1969 to 1977 as the first assistant counsel for the NAACP Legal Defense and Education Fund.

Tom J. Farer, born in 1935 in New York City, is a fellow of the Woodrow Wilson International Center for Scholars, on leave from Rutgers-Camden Law School, where he is a Distinguished Professor, and a member of the Inter-American Commission on Human Rights of the OAS. He is the author of *The Laws of War 25 Years After Nuremberg* (1971), *The Regulation of Foreign Intervention in Civil Armed Conflict* (1975), *Warclouds on the Horn of Africa* (1976, 1979), *The Future of the Inter-American System* (1979), and *Toward a Humanitarian Diplomacy: A Primer for Policy* (1980). Professor Farer served as special assistant to the Assistant Secretary of State for Inter-American Affairs (1975), and as a senior research fellow of the Council on Foreign Relations (1975).

Merle Goldman, born in 1931 in New Haven, is professor of history at Boston University. She is the author of *Literary Dissent in Communist China* (1967 and 1970) and *China's Intellectuals: Advise and Dissent*

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(1981), and editor of *Modern Chinese Literature in the May Fourth Era* (1977).

Dieter Henrich, born in 1927 in Marburg, Germany, is professor at the University of Munich. A prolific writer, Professor Henrich has written more than twenty-five books and scores of articles. Although his work appears primarily in German, recent translations have brought him to the attention of the English-speaking public. Two volumes of his essays are forthcoming from Harvard University Press. From 1968 until 1982 Professor Henrich held visiting professorships at Columbia and Harvard.

Stanley Hoffmann, born in 1928 in Vienna, is Douglas Dillon Professor of the Civilization of France and chairman of the Center for European Studies at Harvard. He is the author of *Decline or Renewal: France Since the 30s* (1974), *Primacy or World Order* (1978), *Duties Beyond Borders* (1981), *Dead Ends* (1983), and co-author of *Living with Nuclear Weapons* (1983). Professor Hoffmann has headed a study on universities and human rights for the American Academy of Arts and Sciences.

Leszek Kolakowski, born in 1927 in Radom, Poland, is a senior research fellow at All Souls College, Oxford, and professor of the University of Chicago's Committee on Social Thought. Professor Kolakowski is the author of *Positivist Philosophy* (1970), *Husserl and the Search for Certitude* (1975), *Main Currents of Marxism* (3 vols., 1978), and *Religion* (1982).

Mancur Olson, born in 1932 in Grand Forks, North Dakota, is Distinguished Professor of Economics at the University of Maryland. His works include *The Logic of Collective Action: Public Goods and the Theory of Groups* (1965) and *The Rise and Decline of Nations* (1982). Professor Olson was formerly a deputy assistant secretary in the Department of Health, Education and Welfare.

David S. Pacini, born in 1946 in Wheeling, West Virginia, is assistant professor of historical theology at the Candler School of Theology, Emory University. He contributed the chapter "Revelation, Professionalism, and Breakdown" to *Building Effective Ministry* (1983) and is the author of *The Cunning of Modern Religious Thought: Four Essays* (forthcoming). Professor Pacini served as co-chairman of the Emory University symposium "Rethinking Human Rights," 1982-83.

Gaston V. Rimlinger, born in 1926 in Strasbourg, France, is professor of economics at Rice University. He is the author of *Welfare Policy and Industrialization in Europe, America and Russia* (1971) and "Labor and Social Policy in Continental Europe: 1800-1939," for the *Cambridge Economic History of Europe,* volume 8 (forthcoming). Profes-

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sor Rimlinger served as economic program adviser to the Ford Foundation in West Africa from 1969 to 1972.

John Gerard Ruggie, born in 1944 in Graz, Austria, is professor of international affairs, Columbia University. He is author of *The Antinomies of Interdependence* (1983) and *The Structure of Planetary Politics* (forthcoming), co-editor of *Power, Passions, and Purpose* (forthcoming), and has written numerous articles on international relations theory, international political economy, and international organization. He is a frequent consultant to agencies of the United Nations and the United States on aspects of current global problems.

David Tracy, born in 1939 in Yonkers, New York, is professor of theology and professor on the Committee on the Analysis of Ideas and Methods at the University of Chicago. He is the author of *Blessed Rage for Order* (1975) and *The Analogical Imagination* (1980). Professor Tracy is at work on a book on political theology that will include human rights issues.

Warren Weinstein, born in 1941 in Brooklyn, New York, is a senior consultant with Ronco, a private consulting group engaged in Third World development. Among his many works are *Africa's Alternatives: Soviet and Chinese Aid to Africa* (1980), *African Perspectives on Human Rights* (1980), and "The Protection of Minorities in Africa: Problems and Prospects," in *International Protection of Minorities* (1981). Mr. Weinstein served as Peace Corps Director in Togo. He is currently engaged in studies covering food policy and development in the Third World.

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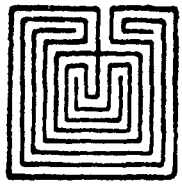

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